Attachments are not included but may be obtained by contacting the Bureau of Federal Rental Assistance at: (617) 727-7130 x665.

Department of Housing and Community Development

Administrative Plan for Tenant Based Rental Assistance under the Section 8 Certificate and Voucher Programs

---

This document combines the Department of Housing and Community Development's (DHCD) administrative plan and equal opportunity plan. The Department of Housing and Urban Development (HUD) allows public housing agencies (HAs) broad discretion to adopt local policies for operation of the tenant-based program. This plan reflects the exercise of those policy choices by DHCD. Sections required by HUD regulation are indicated by an asterisk (*). Other DHCD policies and procedures articulated herein are subject to change in accordance with all applicable HUD requirements. This plan is not a comprehensive statement of DHCD's procedures for program administration but is intended to provide applicants, participants, and owners with a basic understanding of DHCD's Section 8 program.

For more information applicants, participants, and owners, are directed to the following:

HUD's program regulations that are found in the "Code of Federal Regulations" Title 24, Parts 5, 750, 760, 792, 812, 813, 882, 887, 888, 982, 983, and 984;

The owner information packet that is available upon request from each administering agency.

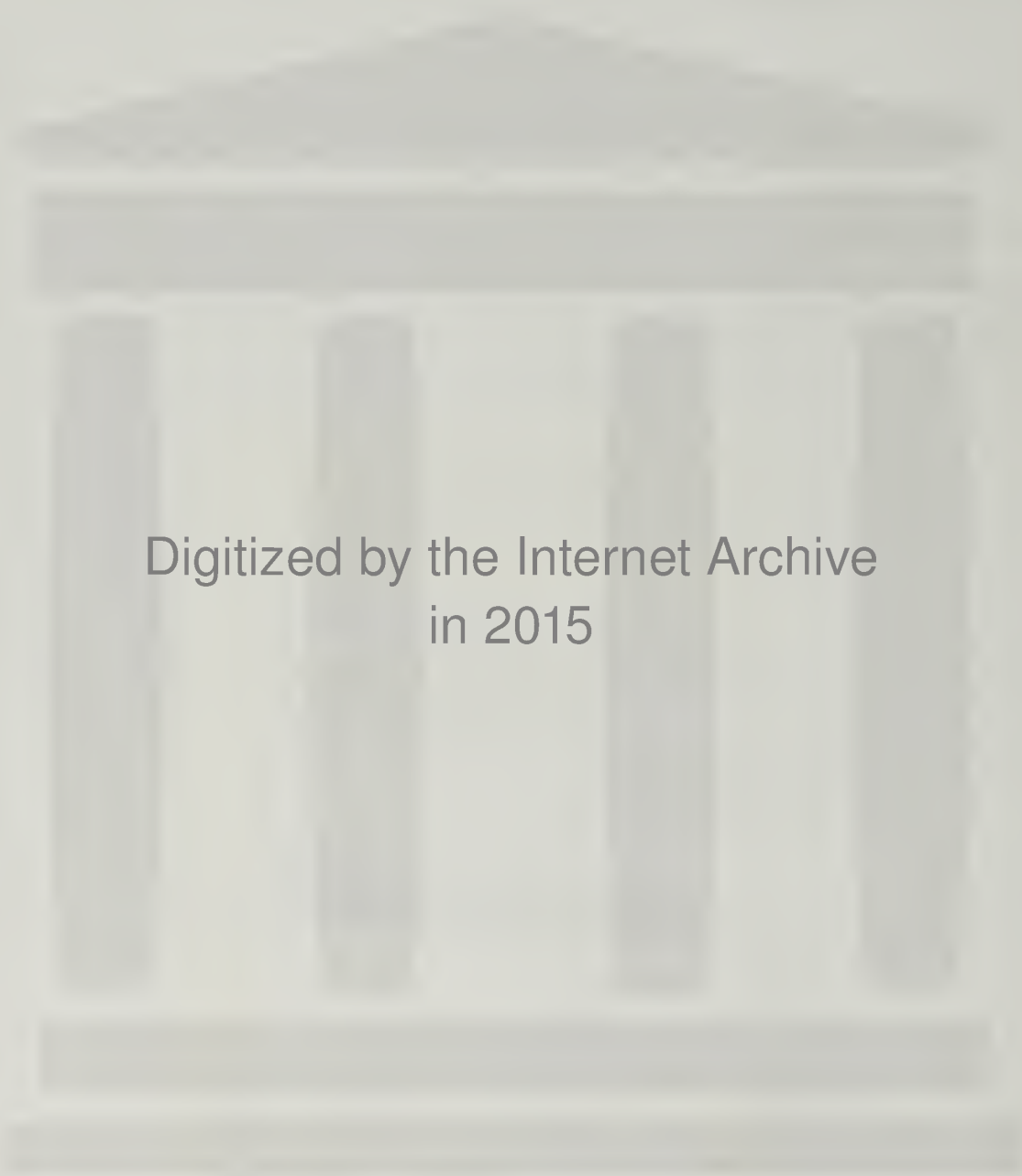
The information packet for participants that is available upon request from each administering agency.

The "Property Owners Handbook" (may not be available at all agencies).

A copy of this plan is on file at the U.S. Department of Housing and Urban Development (HUD), Office of Public Housing, 10 Causeway Street, Boston, MA 02222.

Effective date: April 1, 1996.
Revised: January 2, 1997
January 31, 1997
January 26, 1998

TABLE OF CONTENTS



1. Definitions & Clarifications*

These definitions and clarifications are provided for the reader's convenience. They do not supersede the definitions found in HUD's program regulations for the same terms.

Applicant A family that has applied for admission to the program, but is not yet a participant. A family becomes a participant on the effective date of the first HAP contract executed by the RAA for the family (first day of initial lease term).

Brief period Thirty days or less.

Conviction Found guilty by a court of law.

Days Consecutive days.

Drug related criminal activity The illegal manufacture, sale or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in Section 102 of the Controlled Substance Act, 21 U.S.L. 802); or the illegal use, or possession for personal use, of a controlled substance.

Eviction A termination of a tenancy by a court of law, as evidenced by a Judgment for Possession.

Extension of time *(for HQS inspection repairs)* Allows additional time, usually not more than 30 days, to complete the required repairs, during which time the HAP payment may:

- continue to be paid in full;
- be withheld and retroactively repaid in full; or
- be withheld and reduced appropriately when payments resume or HAP contract is terminated.

Family* All the members of a household under one roof and consisting of approved household members as listed on the HAP contract or as subsequently approved by both the owner and the RAA. DHCD recognizes that a variety of relationships exist, which are not necessarily relationships of ancestry or marriage. Each RAA is encouraged to exercise the best possible judgment in this regard. A family may consist of a single individual.

HAP contract The contract between the RAA and the owner that allows the RAA to make housing assistance payments directly to the owner on a program participant's behalf.

HAP payment The subsidy paid to the owner, by the RAA, on behalf of a program participant.

> **Suspend HAP payment** The HAP payment is not being made; e.g., either terminated or withheld, regardless of the reason.

Terminate HAP payment Stops housing assistance payments to the owner until the required repairs are completed. Once the HAP payment is terminated, no retroactive payment, either partial or full, may be made to the owner. The RAA will provide the owner with written notice of its intent to terminate the HAP payment in accordance with the HAP contract. The notice will state that the HAP payment will resume only when all required repairs are completed.

Withhold HAP payment Stops the HAP payment to the owner during an extension of time, after which a retroactive payment, either partial or full, may be provided.

The distinction between withholding the HAP payment and terminating the HAP payment is that withholding is done during an extension period, which allows a retroactive payment to be made.

Housing agency Any agency that administers federal or state housing assistance programs. Abbreviated as HA. A local housing authority is an HA. DHCD is an HA.

Housing Quality Standards (HQS) HQS refers to both HUD's HQS and DHCD's supplemental inspection requirements. Units must meet HQS at all times. Once a unit is under a HAP contract, a primary contractual obligation of the owner and the RAA is to ensure that the unit continues to meet all HQS.

Household Family members and others who live under the same roof.

Owner Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant A family that has been admitted to the RAA program, and is currently assisted in the program. A family becomes a participant on the effective date of the first HAP contract executed by the RAA for the family (first day of initial lease term).

Public housing State- and federally-assisted public housing.

Regional administering agency An agency under contract with DHCD to administer federal rental assistance programs on its behalf. Abbreviated as RAA.

Repairs completed The repairs have been completed to the satisfaction of the RAA, and in compliance with HQS.

Recovering addict A person that: 1) has completed a supervised drug rehabilitation program and is not currently engaged in the illegal use of a controlled substance; or has otherwise successfully been rehabilitated and not currently illegally using drugs; or, 2) is involved in a supervised rehabilitation program and not currently illegally using drugs; and is involved in a self help group, such as Narcotics Anonymous, and not currently illegally using drugs.

Subsidy Section 8 certificates and vouchers. The terms "certificate" or "voucher" are used only when necessary to distinguish between the two programs.

Temporary For the purpose of determining family unit size when children are in foster care, is a DSS family reunification target date of one year or less.

Violent criminal activity Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

2. Roles and Responsibilities

2.1 RAA Responsibilities

The RAA is responsible for daily program administration. The RAA must comply with HUD regulations and requirements, this administrative plan, and the terms and conditions of its contracts with DHCD for Section 8 program administration.

In accordance with this plan, RAAs are required to develop their own procedures relative to the following:

- Resolution of owner and tenant complaints that are not subject to the informal review or hearing process.
- Enforcement procedures for tenant-caused HQS violations.
- Managing and responding to information pertaining to alleged drug and violent criminal activity.
- Reasonable accommodation.
- Making decisions relative to family break-ups.
- Internal quality control monitoring for all SEMAP indicators.
- Others as may be required.

DHCD will periodically monitor RAA administrative practices to ensure consistency in the implementation and on-going administration of all aspects of its Section 8 program. At any time, DHCD may require RAAs to amend or modify their discretionary procedures.

2.2 Owner Responsibilities

An Owner is responsible for:

- Screening tenants.
- Complying with the HAP contract.
- Maintaining the unit in compliance with HQS.
- Enforcing lease requirements.

For a further description of owner responsibilities refer to 24 CFR parts 882, 887, 982, and 983.

2.3 Family Responsibilities

2.3.1 Applicant Responsibilities

While on the waiting list an applicant must notify the RAA of any changes in address and preference status.

Upon selection, an applicant must provide the RAA with complete and accurate information necessary to determine program eligibility.

Upon determination of eligibility, an applicant must conduct and complete a housing search within 120 days.

For a further description of applicant responsibilities refer to 24 CFR parts 882, 887, 982, and 983.

2.3.2 Participant Responsibilities

For a further description of family responsibilities refer to 24 CFR parts 882, 887, 982, and 983. Families participating in a Family self-sufficiency program should refer to 24 CFR part 984.

2.3.2.1 Family obligations

For the complete text of family obligations see the Certificate of Family Participation, the Housing Voucher, the lease and the lease addendum. Violation of Family Obligations may be cause for program termination -- see Section 11.1.1.

3. Eligibility and Intake*

Generally, only very-low income families are eligible for assistance. However, in some circumstances, a low-income family that has been "continuously assisted" is eligible for assistance.

* A family is considered to be continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program. The United States Housing Act of 1937:

- required states to pass legislation enabling establishment of local public housing agencies (HAs) in order to receive federal assistance; and,
- authorized the public housing program.

1937 Housing Act programs are:

- The public or Indian housing program.
- Any program assisted under Section 8 of the 1937 Act, including assistance under a Section 8 tenant-based or project-based program.
- The Section 23[1] leased housing program.
- The Section 23 housing assistance payments program.

Brief interruptions in assistance caused by transitioning from one form of assistance under one 1937 Act program to another will not be considered to break the continuity of assistance where the reason for the transition was through no fault of the family, such as the expiration of a HAP contract for a project-based development or termination of a HAP contract for owner breach.

[1] Section 23 means Section 23 of the United States Housing Act of 1937 prior to enactment of the Housing and Community Development Act of 1974.

*3.1 Preferences**

3.1.1 Summary of HUD Preferences

On January 15, 1988, HUD published regulations that mandated preference criteria for selection of eligible applicants to all federally assisted housing. These criteria were legislated by the Congress in 1979 and 1983. The effective date of implementation of these criteria was July 13, 1988. Under federal law, an HA must give preference for admission to applicants that:

1) are living in substandard housing, which includes families that are homeless or living in a shelter for the homeless;

2) have been or will be involuntarily displaced from housing;

3) are paying 50% or more of their household's income toward rent and utilities.

HUD allows each HA to structure these federal preferences through the use of ranking preferences. A ranking preference governs selection among applicants that qualify for a federal preference. HAs may rank the criteria as they so choose, and may adopt local modifications of the standard preference definitions. HAs may modify their selection criteria at any time, provided: a) the modifications are consistent with the federal regulations; b) notification is provided to persons currently on a waiting list and to the public; and, c) appropriate changes are made to the HUD-required administrative plan. HAs may also adopt local preferences that govern selection among applicants that do not qualify for a federal preference.

As of October 18, 1994, tenant selection procedures are governed by federal regulation 24 CFR part 982 that is incorporated by reference. The regulations and definitions found at part 982 apply to this section unless otherwise stated. HUD's admission preferences may be found at 24 CFR part 5, Subpart D.

Effective January 26, 1996 HUD suspended the federal preference requirement. HAs are no longer required to issue tenant-based certificates and vouchers or refer families to vacant moderate rehabilitation and project-based certificate units based on the federal preference system. In addition, HAs are no longer required to provide public or Indian housing residents a selection preference based on their prior federal preference status. If an HA wishes to change its current preference system, the HA must give notice and opportunity for public comment before issuing certificates and vouchers under the new participant selection system.

3.1.2 DHCD's Tenant Selection Preferences

SUMMARY

FEDERAL PREFERENCE (see discussion at 3.1.2.2)

- **Substandard Housing**

Applicants who are living in *substandard housing,* including those who are homeless.

- **Involuntary Displacement**

Applicants who have been or will be *involuntarily displaced* and have not found standard, permanent replacement housing including those displaced by: disaster; government action; action of housing owner; domestic violence; fear of reprisals; hate crimes; or inability to use critical elements of the unit.

- **Rent Burden**

Applicants paying 50% or more of their monthly income toward their rent and utility costs.

RANKING PREFERENCE APPLIED TO FEDERAL PREFERENCES

Applicants with a federal preference designation will be selected from the waiting list in chronological order; however, a ranking preference will be applied to applicants meeting the criteria for automatic preference under victim/witness protection provisions or formerly homeless families assisted under DHCD's HOME TBRA I & II programs.

NON-FEDERAL PREFERENCE (see discussion at 3.1.2.3)

Each year, 10% of DHCD's admissions can be families that do not qualify for a federal preference. If available, one in ten subsidies will be issued to standard applicants in accordance with the 10% exception authority permitted by regulation. For project-based assistance up to 30% of admissions may be standard applicants.

Standard Applicants: Applicants who are income eligible according to HUD's current published income limits.

AUTOMATIC PREFERENCE (see discussion at 3.1.2.1)

Applicants in the following categories receive subsidy in the following order provided DHCD has available budget authority:

- Section 8 Mod Rehab tenants who must move and are eligible for continued subsidy.
- Persons being assisted under witness/victim protection provisions.
- Formerly homeless families presently receiving assistance under DHCD's HOME TBRA I & II programs.
- Transfers from other DHCD agencies and other HAs (except for absorbtions).

Applicants shall receive preference consideration in selection, in the manner prescribed below, for any available DHCD Section 8 Certificates or Vouchers, provided the applicant: 1) is otherwise eligible for Section 8 assistance; 2) meets the criteria for preference selection listed below; and, 3) can verify their eligibility.

Special Initiatives: DHCD modifies these tenant selection preferences as necessary for special initiatives. As they occur, these modifications are submitted to HUD as amendments to DHCD's administrative plan. Special initiatives approved by HUD to date include Project-Based Assistance (PBA), Homeless Veterans (VASH), the Family Unification Program (FUP), and the Tenant Based Rental Assistance (TBRA) Initiative for persons with Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection.

3.1.2.1 Automatic preference criteria

There are four automatic preference categories under which families may be eligible. Except for applicants under victim/witness protection, transfers, and formerly homeless families holding a DHCD HOME I or II TBRA subsidy, these households must be issued a subsidy, regardless of the status of the waiting list (open or closed), or the actual availability of a subsidy provided DHCD has available budget authority. All applicants qualifying for an automatic preference must be placed on the waiting list, given a control number, and their eligibility properly documented. If a subsidy is not available DHCD must be notified.

The four categories of households eligible for an Automatic Preference are:

3.1.2.1.1 Mod Rehab tenants

Mod Rehab is a project-based program and a certificate or voucher is not issued except under certain circumstances. Frequently, Mod Rehab tenants must relocate through no fault of the household such as a change in family size or for accommodation under Section 504 of the Rehabilitation Act of 1973. In these instances, the RAA must first refer the household to any suitable comparable Mod Rehab unit that may be available. If the household rejects the unit for good cause, they should be issued a certificate or voucher, regardless of availability. If the family cannot provide a good cause reason for rejecting an offer of a suitable Mod Rehab unit, the RAA should take steps to terminate the family from the Section 8 program.

A Mod Rehab tenant may request a certificate or voucher in accordance with the reasonable accommodation principle contained in Section 504 of the Rehabilitation Act of 1973. If a Mod Rehab tenant can demonstrate that to remain in the Mod Rehab unit would pose a hardship because of that tenant's handicap, and where the owner is not legally obligated to make the necessary accommodation, the tenant may request a certificate or voucher. The RAA must determine whether, due to the tenant's handicap, the Mod Rehab unit is inappropriate housing for that tenant. The fact that the handicap existed when the tenant originally agreed to live in the Mod Rehab unit may not be considered when making this decision.

If the RAA is unable to fill a vacant Mod Rehab unit from its waiting list after 30 days (or if the owner has rejected, with good cause, applicants referred from the list), the agency may approve for Mod Rehab subsidy a Section 8 eligible applicant selected by the owner.

Those tenants selected under this category who are not federal preference eligible do not count toward the 10% exception authority.

For further information on the Mod Rehab tenant selection process, see DHCD's Administrative Plan for the Mod Rehab program.

3.1.2.1.2 Transfers among RAAs and HAs

Certificate and voucher transfers between RAAs must be absorbed by the receiving agency if subsidy is available and must be absorbed before transfers from an out-of-state HA. An RAA may not absorb transfers from an in-state LHA unless approved by DHCD.

DHCD will not accept certificate and voucher transfers from other LHAs under the provisions of statutory and regulatory portability, when the LHA in the community to which the tenant wishes to move administers a Section 8 program. Exceptions for special circumstances such as conflict of interest issues must be approved by DHCD.

Without exception, DHCD will not accept certificate and voucher transfers from other LHAs under the provisions of statutory and regulatory portability, when the LHA in the community to which the tenant wishes to move administers a Section 8 program and the transfer participant has been rejected by that HA as the result of a CORI.

Transfer tenants absorbed by the receiving agency do not count toward that agency's 10% exception authority.

See section 3.2.5 for policy on the right of the receiving agency to perform a CORI.

3.1.2.1.3 DHCD TBRA HOME I or II subsidy holders

Formerly homeless families presently receiving assistance under DHCD's expiring HOME TBRA I or II programs will receive automatic preference and must be issued a subsidy, provided they have complied with all of the requirements of their HOME TBRA subsidy and have been unable to secure other long term rental assistance during the term of the HOME subsidy.

3.1.2.1.4 Victim/witness protection

These households must be offered assistance. However, if a subsidy is not available, the household is placed at the top of the waiting list and offered the next available subsidy.

Persons eligible to be considered for selection under this category must meet all three of the following criteria:

a. the applicant (or member of the applicant's household) has been a witness to or a victim of a crime in Massachusetts and needs witness protection according to a Massachusetts state or local law enforcement agency; and

b. as a result of testifying or agreeing to testify in a court of appropriate jurisdiction against the aggressor, the applicant's household has been placed in a life-threatening situation the circumstances of which can be verified in writing by an appropriate Massachusetts law enforcement official; and

c. all efforts to secure housing assistance from a local housing agency have been exhausted.

An applicant's eligibility for this category must be approved by DHCD before the administering agency may assist the household.

This category differs from the "involuntary displaced to avoid reprisals" category in that the applicant must be in a life-threatening situation the circumstances of which can be verified in writing by an appropriate law enforcement official.

Persons assisted under this section do not count toward the RAA's 10% exception authority as these applicants qualify for a federal preference on the basis of involuntary displacement (24 CFR 5.420(b)(5)). Victim/witness protection is a definitional component of that federal preference category. The application of a ranking preference to this definitional component allows applicants that qualify as meeting the criteria for victim/witness protection to receive assistance before all other families with a federal preference. (see Attachment 3-A)

3.1.2.2 Federal preference criteria and verification requirements

3.1.2.2.1 Federal preference: homeless or substandard housing

To be eligible for this preference either (a) or (b) below must apply.
An applicant is considered homeless if the applicant:

(a) lacks a fixed, regular, and adequate nighttime residence and has a primary nighttime residence that is:

- a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing); or
- an institution that provides a temporary residence for individuals intended to be institutionalized; or
- a public or private place not designed for, or ordinarily used as, a regular sleeping place for human beings.

OR:

(b) Meets all three of the following criteria:

- the family is in imminent danger of losing housing, or has lost housing and is temporarily doubled up, and

- due to the health or environmental needs of the family there is no appropriate temporary shelter, and

- placement in another setting would endanger the health or safety of the family or the occupants of the shelter.

Health or environmental needs of this type could apply to individuals with demanding medical needs, including: the elderly, the terminally ill, and individuals denied access to shelters due to a life-threatening illness or the need for a barrier-free environment.

Generally, transitional housing is considered by HUD to be of a maximum 24 month duration. If an applicant is in transitional housing for a longer period, they must provide the RAA with the following additional information: 1) an explanation as to why they have been in transitional housing for an extended period; and 2) an explanation of why they would be homeless without this housing. Using this information, the RAA will make a determination as to the applicant's homeless status.

To be eligible for this preference due to living in substandard housing federal regulations at 24 CFR 5.425 apply. According to 5.425(a) and (b) an applicant is living in substandard housing if the unit:

- is dilapidated;
- does not have operable indoor plumbing;
- does not have a usable flush toilet inside the unit for the exclusive use of the family;
- does not have a usable shower or bathtub inside the unit for the exclusive use of the family;
- does not have electricity or has inadequate or unsafe electrical service;
- does not have a safe or adequate source of heat;
- should, but does not have a kitchen; or
- has been declared unfit for habitation by an agency or unit of government.

For purposes of meeting substandard criteria, "dilapidated" means the unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety or well-being of a family, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair, or from serious damage to the structure. The presence of lead paint in a building does not cause it to meet the definition of substandard housing.

Verification Requirements for Federal Preference: Substandard Housing/Homeless

Applicants living in substandard housing must provide certification from a unit or agency of government that the applicant's unit has one or more of the deficiencies listed in 24 CFR Section 5.425(a), or the unit's condition is as described in Section 5.425(b).

Homeless applicants who meet the criteria described in section 3.1.2.2.1(a) must provide certification of homeless status from a public or private facility that provides shelter for such households, or from the local police department or social service agency.

Applicants who are homeless due to residing in a transitional housing program must provide a letter from the transitional program's sponsoring agency documenting the applicant's participation and readiness to maintain an independent tenancy. If an applicant reaches the top of the waiting list prior to completing the transitional program they will retain that spot on the waiting list until such time as they successfully complete the program or choose to leave the program. The applicant will then be issued the next available subsidy, provided they are otherwise section 8 eligible.

Homeless applicants who meet all three of the criteria described in section 3.1.2.2.1(b), those without housing or at risk of homelessness for health related reasons, must provide the following:

- documentation from an appropriate source (e.g. present or prior landlord, unit or agency of government, social service agency) that the applicant is in imminent danger of losing housing, or has lost housing and is temporarily doubled up; and

- documentation from a physician or other licensed health professional that placement in another setting, such as a temporary shelter, would endanger the health or safety of the applicant or the occupants of the shelter.

If homelessness is due to fire, and a member of the household caused or contributed to the fire due to negligence or an intentional act, the family is not eligible for a federal preference.

3.1.2.2.2 Federal preference: Involuntary displacement

To be eligible for this preference either (a) or (b) below must apply.

(a) The applicant has been *involuntarily displaced* and is not living in standard, permanent replacement housing; OR,

(b) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the RAA.

Standard, permanent replacement housing is housing that: 1) is decent, safe, and sanitary; 2) is adequate for the family size; and, 3) the family is occupying pursuant to a lease or occupancy agreement. If a family that was involuntarily displaced has temporarily moved in with others in an overcrowded unit, the family is still considered to be displaced.

To be eligible for this preference, the involuntary displacement must affect the entire household occupying the affected unit, except for those applying under the category "displacement by domestic violence" or "displacement by inaccessibility of unit".

Verification requirements applicable to all involuntary displaced categories.

In all cases, except for displacement due to inaccessibility of unit or by natural disaster, applicants must provide proof of residency in the affected unit for six continuous months as evidenced by bank statements, school records, bills, receipt of government benefits, rent receipts, copy of lease(s) or lease agreement(s), canceled checks, utility bills, or other relevant documentation that establishes residency. The RAA may waive this requirement on a case by case basis.

An applicant is involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

3.1.2.2.2.1 Displacement by disaster

An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

If homelessness is due to fire, and a member of the household caused or contributed to the fire due to negligence or an intentional act, the family is not eligible for a federal preference.

Verification Requirements

Certification from a unit or agency of government that an applicant has been displaced as a result of a disaster, as defined in 24 CFR 5.420(b)(1).

3.1.2.2.2.2 Displacement by government action

Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or public improvement or development program.

Verification Requirements

Certification from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in 24 CFR 5.420 (b)(2).

3.1.2.2.2.3 Displacement by action of housing owner

Action by an owner that forces the applicant to vacate its unit.

An applicant qualifies under this category when: 1) the applicant cannot control or prevent the owner's action; 2) the owner action occurs although the applicant met all previously imposed conditions of occupancy; and 3) the owner action is other than a rent increase.

A family evicted for a lease violation(s) does not qualify for this preference.

Verification Requirements

Certification from an owner or owner's agent that an applicant had to, or will have to vacate a unit by a date certain because of an owner action referred to in 24 CFR 5.420 (b)(3).

3.1.2.2.2.4 Displacement by domestic violence

For the purposes of this section, "domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

An applicant is involuntarily displaced by domestic violence if:

- The applicant has vacated a housing unit because of domestic violence; or
- The applicant lives in a housing unit with a person who engages in domestic violence.

If the applicant is still living in the unit at the time of selection, the violence must have occurred within six months or be of a continuing nature.

Verification Requirements

Certification of the domestic violence and/or displacement because of domestic violence referred to in 24 CFR 5.420 (b)(4), from the local police department, social service agency, court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

If approved for assistance, the applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the RAA has given advance written approval. The RAA agency may deny or terminate assistance to the family for breach of this certification. (see Attachment 3-B)

All decisions to terminate assistance or to allow the abuser to return to the household will be made on a case-by-case basis by the RAA and DHCD in consultation with the Massachusetts Coalition for battered women.

3.1.2.2.2.5 Displacement to avoid reprisals

To qualify for this preference, the reprisal need not be life threatening, as is required for Automatic Preference under the Victim/Witness Protection provision.

An applicant is involuntarily displaced if:

- family member(s) provided information of criminal activities to a law enforcement agency, AND
- based on a threat assessment, the law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

Verification Requirements

The District Attorney's Office must certify, in writing, that a member of the applicant household has or is cooperating with an investigation and is currently at risk of reprisal for providing such information; therefore, the DA's Office recommends relocation.

3.1.2.2.2.6 Displacement by hate crimes

For the purposes of this section a "hate crime" is defined as actual or threatened violence or intimidation against a person or the person's property because of race, color, religion, sex, national origin, handicap or familial status.

An applicant is involuntarily displaced if:

- a family member is a hate crime victim; AND
- the applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

If the applicant is still living in the unit at the time of selection, the crime must have occurred within six months or be of a continuing nature.

Verification Requirements
The applicant must provide written verification from the Police Department that a member of the household has been a victim of a reported hate crime.

In addition to the police report, the applicant must provide a letter from the owner that the family resided in the unit.

Applicants still residing in the unit where the crime occurred, must provide a statement that the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

3.1.2.2.2.7 Displacement by inaccessibility of unit

An applicant is involuntarily displaced if:

- a member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

- the owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

For more information on reasonable accommodation please refer to Section 504 of the Rehabilitation Act of 1973 and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act).

Verification Requirements
A licensed medical practitioner must certify that a member of the applicant's family has a mobility or other impairment that makes the person unable to use specific and critical elements of the unit and that the specific accommodation requested would allow the applicant to use that critical element of the unit.

The owner must certify that the tenant has requested certain modifications to the unit; that the critical elements of the unit are as described by the applicant; and that the owner is not legally obligated to make the changes requested.

3.1.2.2.2.8 Displacement because of HUD disposition of multifamily project

Involuntary displacement includes displacement because of disposition of a multifamily rental housing project under Section 203 of the Housing and Community Development Amendments of 1978.

Verification Requirements

Certification of displacement because of HUD disposition of multifamily project referred to in 24 CFR 5.420 (b)(8) must be provided by HUD.

3.1.2.2.3 Federal preference: Rent burden

Applicants paying 50% or more of their family's monthly income toward their rent and utility costs for 90 days or more.

The following definitions apply when reviewing applicants for this preference:

"Family Income" is the gross monthly income of the household (defined in accordance with 24 CFR Part 5 as it applies to the Section 8 program). The following earned income exclusions apply to applicant families where the head of household and/or spouse has earned income from either full-time or part-time employment. These exclusions may only be applied to applicants, for the purpose of determining program eligibility under the rent burden category. The exclusions are:

- Payroll deductions for federal and state taxes.
- Reasonable, documented child care expenses that enable the family member(s) to remain employed.
- Documented health insurance premium costs.

These exclusions are for determining rent burden only. TTP and tenant rent calculations will be in accordance with HUD regulations.

"Rent" is defined as:

1. the actual amount due under a lease or occupancy agreement between a family and the family's current landlord (calculated on a monthly basis), plus

2. the monthly amount of the tenant-supplied utilities, which can be either:

    a. the RAA's reasonable estimate of the cost of such utilities using the RAA's current utility allowances; or

    b. the average monthly payment actually made for these utilities in the most recent 12-month period.

If the applicant is unable to provide utility bills for a 12 month period the RAA will use its current utility allowance schedule to complete the rent calculation.

Any amounts paid to or on behalf of a family under any energy assistance program must be subtracted from utility costs or added to gross income.

If an applicant owns a mobile home but rents the space upon which it is located, then rent must include, in addition to the space rental, the monthly payment being made to amortize the purchase price of the home.

Members of a cooperative are "renters" for the purpose of qualifying for this preference. In this case, rent would mean the charges under the occupancy agreement.

Verification Requirements for Federal Preference: Rent Burden

Applicants will self-certify as to current gross income and rent payments at the time the application is submitted. Should that information change, it is the applicant's responsibility to notify the RAA.

- Income must be verified in accordance with existing agency procedures used to verify income to determine eligibility and Total Tenant Payment.

- Amounts due under a lease or occupancy agreement must be verified by requiring the family to furnish copies of rent receipts, canceled checks, money order receipts, or a copy of a current lease, or by contacting the owner directly.

- For applicants who are not the primary tenant, or are not listed on the lease or rental agreement as a co-renter, the only acceptable verification will be canceled checks or money order receipts.

- Amounts paid to amortize the purchase price of a mobile home must be verified by requiring the applicant to furnish copies of payment receipts, or a copy of a current purchase agreement, or by contacting the lienholder directly.

- Amounts paid for utilities must be verified by requiring the applicant to provide copies of appropriate bills or receipts for a 12-month period. If verification for this period is not available, the agency should use its own utility allowances to determine whether or not the applicant's gross rent exceeds 50% of income.

Applicants must verify that they have been paying 50% or greater of gross income for rent, for at least 90 days immediately prior to selection from the waiting list.

An applicant is not rent burdened unless they have been paying 50% or more of their gross income for the 90 days immediately prior to their selection from the waiting list. Generally, an RAA should average the family's income for that 90 day period; but is encouraged to use the method that would most benefit the applicant.

3.1.2.3 Non-federal preference: Standard applicants

Standard applicants are Section 8 eligible applicants that do not qualify for a federal preference.

Verification Requirements

Verification will include, but is not limited to, documenting the applicant's family composition, gross annual household income, and standing from previous federal tenancies.

3.1.3 Preference Retention

3.1.3.1 Families Receiving HOME Tenant-Based Rental Assistance (TBRA)

The RAA will determine the eligibility of an applicant receiving HOME TBRA based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program. The HOME statute permits the family to retain its prior federal preference situation. The applicant must be able to verify their housing situation prior to receiving HOME TBRA subsidy.

3.1.3.2 Families Admitted to Public Housing After April 26, 1993

DHCD's Section 8 Program is administered through regional administering agencies that do not have public housing programs. Therefore, the provision for the admission of public housing tenants [found at 24 CFR 5.410 (d)(4)] is not applicable to applicants on the Section 8 waiting lists of DHCD's regional administering agencies since the applicant can not be in public housing of the same housing agency

3.1.3.3 Families Receiving Rental Assistance Under the HOPWA Program

The RAA will determine the eligibility of an applicant receiving rental assistance under the HOPWA program based on the situation of the applicant at the time the applicant began to receive rental assistance under the HOPWA program. DHCD will permit the HOPWA assisted family to retain its prior federal preference situation. The applicant must be able to verify their housing situation prior to receiving HOPWA subsidy.

3.1.4 10% Exception Authority

HUD regulations limit non-federal preference admissions to 10% annually. DHCD requires that RAAs use this authority to provide assistance to the following applicants:

- standard applicants

3.1.5 Change in preference status

A family's situation may change while on the waiting list. Upon selection, the family may be considered for any preferences for which it may be eligible.

3.1.6 Denying a Preference

RAAs are prohibited from providing an applicant with any type of preference if any member of the applicant household is a person who was evicted from housing assisted under the 1937 Act for drug related criminal activity within the last three years. [24 CFR 5.410 (d)(3)]

However, the RAA may give an applicant a preference if:

- the applicant has successfully completed a drug rehabilitation program approved by the RAA; or
- the applicant did not participate in or know about the drug related criminal activity; or,
- the RAA determines the person no longer participates in such activity.

3.1.7 Single's Preference

When applying the single's preference, select among applicants as follows:

1 First, in chronological order, all families and/or households whose head or spouse or single member is 62 years or older, disabled or displaced, and has a federal preference designation.

2 Second, in chronological order, all applicants whose head or spouse or single member is 62 years or older, disabled or displaced; and do not have a federal preference.

3 Third, in chronological order, all single applicants who are not 62 years or older, disabled or displaced and have a federal preference designation

4 Fourth, in chronological order, all families, and single applicants who are not 62 years or older, disabled or displaced that are income eligible only. This group consists of standard applicants and by federal regulation no single, standard applicant can be selected until all other single persons in groups one and two have been selected.

3.2 Verification Requirements Applicable to all Admissions

3.2.1 Verification of disability

Receipt of SSI or Social Security Disability payments is a sufficient demonstration that an applicant is disabled. In the absence of such income, a qualified individual must confirm whether or not applicants meet HUD's definition. Each RAA must have a verification form for use in these cases.

3.2.2 Verification of zero income

As a practical matter, a family must have income from a source or another party that is paying for their living expenses on their behalf. Rent and utility payments paid on behalf of the family and other cash or non-cash contributions provided on a regular basis must be counted as income. Participants that claim zero income must be re-certified each quarter at a minimum, but preferably monthly.

3.2.3 Verification of income from self-employment.

Verification of income from self-employment will be based on a 12 month period that is appropriately measured by the family's federal and state income tax returns. Self-employed individuals are required to file quarterly income tax returns regardless of how much they earn. Tax returns are the only acceptable method of verification.

If the self-employment is of a seasonal nature, the RAA may request a family's income tax returns for a 12 month period.

3.2.4 Verification of drug or alcohol rehabilitation

In accordance with the Housing Opportunity Extension Act on 1996 an RAA may require the family member who has engaged in the illegal use of drugs within the past three years to submit evidence of participation in or successful completion of a supervised treatment program as a condition of being allowed to participate in the Section 8 program.

3.2.5 CORI - Criminal Offender Registry Information

DHCD requires each RAA to run a CORI check on all applicant family members who are 18 years and older as part of the eligibility verification at the time of selection from the waiting list.

Participant families that transfer into the RAA's program without a certification in the file stating the date that a CORI check was run by the issuing HA are subject to this requirement. It is not necessary to run a CORI check on families that are transferring in from an HA that certifies that it requires a satisfactory CORI as a condition of admittance to its Section 8 Program.

Any participant family accepted onto the program prior to the RAA requiring a satisfactory CORI as a condition of eligibility must have a CORI check run at its next annual reexamination. Elderly participant households, that are comprised of either a single person or a couple with no other family members, are exempt from this requirement.

Each family member who reaches the age of 18 years must consent to a CORI status check at the family's next annual reexamination. Any new family member age 18 years and older must consent to a CORI status check prior to RAA approval for the new member to reside in the assisted unit.

The RAA will act only on information relative to violent or drug related criminal acts that occurred within the two years (one year for possession of drugs for personal use) prior to its receipt of an unsatisfactory CORI report with the following exception: Persons convicted of egregious acts of violence such as in the case of rape or murder, may be terminated or denied assistance regardless of the length of time that has elapsed since the crime was committed.

The RAA has the authority to consider mitigating circumstances in all instances of unsatisfactory CORI status reports. During the conditional period (which will not exceed two years), the family may only transfer to another HA's program if it gives the RAA written permission to divulge the facts of its conditional admittance to the Section 8 program to the receiving HA.

A family member's refusal to give signed consent for the CORI check is cause for denial or termination of assistance. If the head of household refuses to sign the consent form the entire family will be denied assistance or terminated from the program. If a member other than the head of household refuses, the remainder of the family may be assisted provided that the head agrees that such member will not reside in the assisted household.

Unless the RAA becomes aware of a possible criminal offense necessitating confirmation through another CORI check, each family member will only be subject to one CORI check during the course of his or her participation. However the RAA may, at its discretion, re-run a CORI check within two years of the informal hearing for any family member accepted by the RAA based on mitigating circumstances after receipt of an unsatisfactory CORI report.

Unless the CORI report is used to deny, condition or terminate assistance it must be destroyed by the RAA. It is illegal to keep unused reports on file. CORI reports used to deny, condition or terminate assistance must be kept under lock with extremely limited access to staff responsible for eligibility verification.

*3.3 Waiting List**

HUD regulations allow an HA to use either a single waiting list for admission to its tenant-based certificate and voucher programs, or to use separate waiting lists for a county or municipality. DHCD is transitioning from a multiple list system to a single-list system. This section describes DHCD administrative procedures for the single list, once established, and administrative procedures for existing waiting lists during the transition to a single list.

3.3.1 Application for Assistance

RAAs may use an abbreviated application if the average wait for selection will exceed 60 days. At a minimum the following information must be received for an application to be considered complete.

1. applicant name;
2. number, age and gender of family members who will live in the unit (necessary to determine the family unit size; i.e., the number of bedrooms for which the family qualifies under the HA occupancy standards
3. preference designation, if none given the family will be listed as a standard applicant
4. racial or ethnic designation of the head of household as required by HUD regulation at 24 CFR 982.204
5. Social Security Number for the head of household only

Applications missing any of this information will not be processed, and the applicant will be so notified by mailing to the address provided on the application.

3.3.2 Procedure for administering existing waiting lists during the transition to a single list.

Any RAA seeking to establish, reopen, or close a DHCD waiting list must first consult with DHCD. The opening and closing announcement will usually be combined in a single public notice as the application period is usually less than one month. If a waiting list will be open for longer than one month, the notice to close the waiting list will be given in the same manner in which it is opened.

When an RAA has exhausted its waiting list, it may either open its waiting list or select from the waiting list of any other DHCD regional administering agency. The RAA's decision must be made in consultation with DHCD. If an RAA has exhausted its federal preference applicants, it may continue to select standard applicants from its own list without reopening its waiting list provided DHCD's 10 % leasing limit on standard applicants is not exceeded, and there exists a sufficient pool of federal preference applicants on other DHCD waiting lists. Once the 10% limit on standard applicants is met, the RAA will select applicants having a federal preference designation from the waiting list of any other DHCD regional administering agency. In this fashion, all existing waiting lists will be methodically exhausted or substantially diminished prior to the establishment of a single DHCD waiting list.

All selection will be conducted in accordance with the RAA's Section 8 transfer policy currently in effect (see Attachment 3-C). Irregardless of which waiting list the applicant is selected from, verification of eligibility and preference status will be performed by the RAA in the applicant's jurisdiction. If eligible it will perform the briefing session and issue a subsidy. When the RAA has subsidy available, it will issue to the applicant. If the RAA is 100% leased, it will issue a subsidy on behalf of the RAA from whose list the applicant was selected. Eligibility, CORI, and preference appeals will be conducted by the RAA that made the initial determination.

3.3.3 Establishing a single waiting list

The DHCD single waiting list will be managed by a central waiting list administrator. The central waiting list administrator will be responsible for a majority of admissions functions, including but not limited to: receiving applications, entering data, maintaining and updating the waiting list; and mass mailings to applicants.

At a future date, to be determined by DHCD, all applicants remaining on existing RAA waiting lists will be notified by mail, of the change to a single waiting list. The single waiting list will be established by any one of the following methods.

1. By a lottery.
2. By random order.
3. By date and time of application.

The method to be used will be clearly articulated in the letter to applicants. Once the single list is established, applicants will be notified of their new position on the list.

After the single waiting list has been established with any remaining applicants, public notice will be given and the list will be open to new applicants.

When the waiting list is open applications will be accepted at all RAAs. Applications will not be accepted by FAX. Mailed applications shall be sent to the central waiting list administrator. Incomplete applications will be rejected and returned to the applicant without exception. Corrected applications will not be accepted after the waiting list is closed unless the applicant can demonstrate mitigating circumstances.

3.3.4 Selection from the single list

Selections will be made in order, with one in 10 subsidies issued to a standard applicant. Applicant files will be forwarded to the appropriate RAA for verification, issuing, briefing, and ongoing administration if the applicant chooses to lease in that jurisdiction. RAAs will be responsible for notifying the waiting list administrator of the disposition of all applications.

3.3.5 Reopening and/or closing the single waiting list

If the list is closed, the list will be reopened when DHCD determines that there is an inadequate pool of applicants to maintain optimal leasing rates.

The opening and closing announcement will usually be combined in a single public notice as the application period is usually less than one month. If a waiting list will be open for longer than one month, the notice to close the waiting list will be given in the same manner in which it is opened. It is DHCD's goal that the establishment of a single waiting list will enable the list to remain open, so applications can be accepted on an ongoing basis.

3.3.6 Waiting list information

When applications are being updated or initially received, the applicant must sign a form certifying their eligibility for a preference. Verification must be provided by the applicant after they have been selected. In accordance with 982.201(e) information verifying family eligibility must be obtained by the RAA no more than 60 days before the RAA initially issues a certificate or voucher to the applicant.

3.3.6.1 Change in preference status- effect on waiting list position

An applicant's preference status may change while they are on the waiting list. A standard applicant may become federal preference eligible or vice versa, and request that their preference category be changed. They will retain their place on the waiting list and their preference status will be changed as of the date the RAA or central waiting list administrator receives the applicant's certification or verification that they qualify for a preference. If upon selection and verification it is determined that the family doesn't qualify for the preference claimed, the family is returned to the waiting list to the place it would have been given if the family had not claimed the preference.

If the RAA denies an applicant preference status, the RAA must provide the applicant with the opportunity to request a meeting with appropriate agency personnel. (see Section 9, Informal Hearings and Reviews)

3.3.6.2 Removing names from the waiting list

RAAs or the central waiting list administrator will remove names of applicants who do not respond to a request(s) for information or updates; who have refused offers of tenant-based assistance under both the certificate program and the voucher program; or who have failed to verify eligibility upon selection from the waiting list.

Until the transition to a single list, if the RAA did not accept applications from standard applicants at the time the list was established, and upon selection, the applicant can not verify preference status, they will be dropped from the waiting list.

3.3.7 Special program waiting lists

DHCD administers a variety of special programs. Applicants for these programs must meet additional, specific, eligibility requirements. Depending on the program, the waiting list may be maintained by the RAA or by some other provider agency that serves the target population. When an applicant can not establish basic program eligibility at the time of application, the RAA or provider agency may refuse to place the applicant on the special program waiting list. For

example, an applicant to the Family Unification program (FUP) must not be placed on the waiting list until they provide verification that they have an open DSS case. If the RAA or provider agency decides not to place the applicant on the special program waiting list they must keep a copy of the application, formally reject the applicant, keep a copy of the rejection on file and notify the applicant of their right to an informal review. If admissions decisions are made by the provider agency, that agency is responsible for conducting the informal review.

Applicants that self-identify on the standard Section 8 application as eligible for a special program(s) must complete the application specific to that program if the list is maintained by an RAA, or be referred to the provider agency that maintains that waiting list. Only those applicants for whom minimum eligibility requirements can be verified should be placed on the list, if open.

See Section 18 for more information on special programs.

*3.4 Denial of Assistance to Applicants**

Denial of assistance to an applicant may include any or all of the following:

- denying listing on the waiting list;
- refusing to issue a certificate or voucher;
- withdrawing a certificate or voucher;
- refusing to enter into a HAP contract or approve a lease; or
- refusing to process or provide assistance under portability procedures; for example, refuse to issue a subsidy to allow a move to a different unit.

When assistance is denied the family must be notified in writing of the reason and offered an informal review.

HUD requires an RAA to deny assistance if any family member refuses to sign or submit the required consent forms in accordance with HUD regulation (24 CFR 5.230). Section 5.230 pertains to verification of income and includes computer matching with State Wage Information Collection Agency (SWICA).

The Housing Opportunity Program Extension Act of 1996, signed into law on March 28, 1996 requires that persons evicted from Public Housing, Indian Housing, Section 23, or any Section 8 program because of drug-related criminal activity are ineligible for admission to Section 8 programs for a three-year period beginning on the date of such eviction. The RAA may waive this requirement if: 1) the person demonstrates successful completion of a rehabilitation program approved by the RAA; or, 2) the circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household.

If an applicant owes money to an HA from a previous tenancy in a state- or federally-assisted unit, the RAA may require that the applicant satisfy the full reimbursement prior to receiving their Section 8 assistance.

3.4.1 Grounds for denial of assistance

There are circumstances where an applicant's past performance in a state-or federally-assisted housing program will disqualify the family for admission to DHCD's Section 8 programs. However, the RAA may not automatically deny assistance to a family without having conducted an independent investigation into the circumstances of each case, including the seriousness of the offense, how long ago it occurred, and whether the family composition is the same.

An RAA has discretion to consider mitigating factors presented by the family when deciding whether or not to deny assistance. See Section 13.2 for more information about mitigating circumstances.

In the absence of mitigating circumstances, the RAA will deny assistance to an applicant for the following reasons:

1. If the family violates any Family Obligations as listed in HUD regulations for the Section 8 program.

2. If any family member has ever been evicted from public housing.

3. If any RAA has ever properly terminated assistance under the certificate or voucher program for any family member.

4. If any family member commits drug related or violent criminal activity.

5. If any family member commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program, e.g., withholding information about income during a required reexamination, or misrepresenting the family's income in a previous federal- or state-assisted tenancy.

6. If the family currently owes rent or other amounts to the RAA or to another administering agency in connection with Section 8, public housing assistance under the 1937 Act, or state-assisted public housing, and has not made a good faith effort to meet the terms of their promissory note or repayment agreement.

7. If the family has not reimbursed any RAA or administering agency for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

8. If the family breaches an agreement with the RAA to pay amounts owed to an RAA, or amounts paid to an owner by a RAA.

9. If the family has engaged in or threatened abusive or violent behavior toward RAA personnel.

10. If any household member has been evicted from public housing, Indian housing, Section 23, or any Section 8 program because of drug-related criminal activity within three-years of the date of admission.

11. If the RAA determines that there is reasonable cause to believe that any household member abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

12. If the RAA determines that there is reasonable cause to believe that any household member's **pattern** of illegal use of a controlled substance or **pattern** of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

3.5 Tenant Selection Under the March 8, 1991, Consent Decree NAACP v. KEMP

In the above-referenced Consent Decree, U.S. District Court Judge Walter Skinner ordered that HUD make available five hundred (500) Section 8 Certificates for residents of the City of Boston. One hundred (100) tenant-based Certificates have been allocated to DHCD. Issuance of these Certificates

will be limited to applicants who are residents of the City of Boston on the waiting list, using the preference criteria detailed in Section 3.1.2.

These one hundred Certificates will be tracked separately. Upon turnover they will be reissued to residents of the City of Boston on the waiting list.

3.6 Applicant Briefing

The first time a family is issued a certificate or voucher the RAA will conduct a detailed briefing session to explain the program to the family. Typically, the briefing will be a group session held at the RAA office. If the family cannot attend a briefing because of illness or disability, the RAA may conduct individual briefing sessions at a location convenient to the family; or, the family may send a proxy to the briefing. The family must sign a release form authorizing the proxy to attend the briefing on its behalf. All forms distributed at the briefing that require a signature must be signed by the family, not the proxy, and returned to the RAA.

Topics to be discussed at the briefing will include:

- A description of the program.
- Discrimination and fair housing issues.
- Family and owner responsibilities.
- An explanation of portability.
- Where the family may lease a unit, both within and out of the RAA jurisdiction.
- What agency should administer the subsidy out of the jurisdiction of the issuing RAA.
- For families that live in high poverty areas, an explanation of the advantages of moving to an area that does not have a high concentration of poor families. For a list of high poverty census tracts see Attachment 3-D. These high poverty areas must be identified to all applicants at the briefing.
- How to submit a RFLA.
- The possible impact of a CORI on an applicant's ability to transfer to another RAA or HA jurisdiction.
- Restrictions on moving with continued assistance if money is owed.
- Explanation of exception rents and their appropriate use as mechanisms to enable the family to further their housing opportunities. The RAA should communicate that in appropriate cases, such as reasonable accommodation and deconcentration, an exception rent of 10% may be authorized by the RAA and an exception rent of up to 20% may be authorized with HUD approval.
- The RAA's policy on reasonable accommodation.

The RAA will clarify that in areas where HAs are not yet utilizing the CORI, applicants or participants who transfer are subject to a CORI at the receiving agency (see Section 3.2.5.). The consequences of a new or updated unsatisfactory CORI, including the possibility of program termination, must be explained to the transfer participant.

At the briefing the family will be provided with an information packet that contains, at a minimum, the 17 items required by HUD regulation 982.301(b), and the following:

- The required letter explaining portability and the consequences of voluntarily giving up the subsidy to be signed by the applicant (see Attachment 3-E).

*3.7 Subsidy Standards**

Subsidy standards determine the family unit size. The family unit size is the number of bedrooms needed for families of different sizes and compositions, and is used to determine the maximum rent subsidy for the family.

Subsidy size	Minimum number of persons	Maximum number of persons	Minimum number of bedrooms[1]
SRO	1	1	0
0	1	1	0
1	1	2	1
2	2	4	1
3	3	6	2
4	4	8	3
5	5	10	4
6	6	12	5

[1]Min. # of bedrooms may include other rooms that could be used for sleeping.

For purposes of determining subsidy standards, an adult is 21 years of age or older. A child is under 21 years of age.

Adults will be allocated one bedroom per adult. If two adults consider themselves partners they will be allocated one bedroom.

An adult will not be required to share a bedroom with a child.

The head of household will be allocated one bedroom. If s/he has a partner, the partner will share the bedroom.

Single pregnant women with no other children in the household will be allocated two bedrooms.

Pregnant women with other family members will be allocated sufficient bedrooms to accommodate the new baby if the birth would result in the family being underhoused.

Two children of the same gender, regardless of the age differential, will be allocated one bedroom.

Two children of the opposite gender will be allocated separate bedrooms.

Live-in aides, documented as medically necessary for the care of a family member who is disabled and/or is at least 50 years of age, will be allocated a separate bedroom.

A child who is temporarily absent because of placement in a foster home is considered a family member in determining the family unit size. As used in this section, "temporarily" means that the Department of Social Services (DSS) goal for the family is reunification with their children within one year of the date the subsidy is issued.

When the goal for children in foster care is adoption, the children are not considered "temporarily" absent and the family will be issued a subsidy size that does not include the children in foster care. Should DSS change a family's goal from adoption to reunification the RAA will increase the family's subsidy size as appropriate, and when appropriate. In any case, the RAA will not terminate a HAP contract unless HQS space standards are violated.

The family must sign a release for the purpose of obtaining relevant information from DSS.

If a planned reunification does not occur within the first year after the subsidy is issued the family will be considered overhoused. See sections 3.7.3.3 and 3.7.3.4.

3.7.1 Exceptions to Subsidy Standards

Exceptions to these standards may be granted by the RAA for documented reasons critical to the household's health or if justified by handicap, relationship of family members, or other personal circumstances. Documentation must come from appropriate third party sources such as a doctor, psychiatrist, or psychologist. It is the responsibility of the applicant or participant to obtain such documentation.

3.7.2 Application of Subsidy Standards to Determine Maximum Rent Subsidy

A family may lease a unit with more or fewer bedrooms than indicated on the subsidy. The family may choose to use a living room, or other general living area, as a bedroom. This is allowable provided the applicable HQS space requirements are met, i.e., there is enough square footage in the living/sleeping area for the number of persons who will use such space for sleeping, and there is adequate light and ventilation.

3.7.2.1 Voucher program

Use the payment standard that is the lower of:

- the family unit size; or,
- the actual unit size rented by the family.

This rule is applied to all participants regardless of date of admission.

Example: A 6 person family is issued a 3BR voucher and rents a 2BR apartment, choosing to use the living area as a bedroom. The 2BR payment standard must be used.

3.7.2.2 Certificate program

The gross rent, i.e., the sum of the initial contract rent plus any utility allowance, may not exceed the lesser of:

- the FMR/exception rent limit for the family unit size; or
- the FMR/exception rent limit for the actual unit size rented by the family.

Examples: A 6 person family is issued a 3BR certificate and rents a 2BR apartment, choosing to use the living area as a bedroom. The 2BR FMR must be used.

A 6 person family is issued a 3BR certificate and rents a 4BR apartment. The 3BR FMR must be used.

3.7.3 Adjustments in Family Unit Size due to Changes in Family Composition

3.7.3.1 Unit does not meet HQS

When an RAA determines that a unit does not meet HQS because of an increase in family size or a change in family composition, the family will be issued a larger subsidy size. The family and the RAA must try to find an acceptable unit as soon as possible. If an acceptable unit is available, the RAA must terminate the HAP contract. The higher FMR or APS will not be applied until the family moves.

3.7.3.2 Family is underhoused

If a family is entitled to a larger subsidy because of the application of these subsidy standards (the unit meets HQS), the larger subsidy is issued as follows:

If the family has been in the unit for a minimum of one year:

- when the RAA is notified by the family of this change and that it wishes to move, or
- at its next annual reexamination.

If the family has been in the unit for less than one year:

- at its next annual reexamination.

The higher FMR or APS will not be applied until the family moves. In this instance, the family is not required to move. The family must be issued a larger subsidy but may exercise its right to move at any time in accordance with its lease obligations.

3.7.3.3 Overhoused -- voucher family

When an RAA becomes aware that a voucher family is overhoused, the RAA must immediately issue a smaller voucher. The new (lower) payment standard will be applied at the annual reexamination if the family chooses to remain in place; or, when it moves.

When the voucher is issued the RAA must recalculate the family's payment under the smaller voucher size and inform the family of its options. This will enable the family to determine if it can afford to remain in place.

3.7.3.4 Overhoused - certificate family

If the family's unit has more bedrooms than the subsidy standards permit; AND,
the unit's gross rent exceeds the FMR/exception rent limit for the family unit size under the RAA subsidy standards, the RAA must issue the family a new certificate and the family and the RAA must try to find an acceptable unit as soon as possible. The RAA must inform the family that exceptions to the subsidy standards may be granted and the circumstances under which the RAA will consider granting an exception. If a unit is available, the RAA must terminate the HAP contract.

Families are required to document housing search efforts on a monthly basis in accordance with Section 4.1.2.1. Failure to document housing search efforts may be cause for termination. Certificate families in overhoused situations may be able to exchange their certificate for a voucher to allow them to remain in place (see Section 10.3 on subsidy switching).

3.7.4 Termination Notice and Effective Date

When the HAP contract is terminated due to violation of HQS, or a certificate family is overhoused, the RAA must notify the family and the owner of the termination. The termination is effective at the end of the calendar month that follows the calendar month in which the RAA gives notice to the owner.

3.7.5 RAA Role in Identifying Acceptable Units

If a family is required to locate another unit, the agency will assist the family in its housing search to the greatest extent possible. This will include providing the family with current listings of known available units and appropriate referrals to housing search agencies.

An "acceptable unit" is one that is within the same school district or within the family support network.

3.8 Choosing between Certificates and Vouchers

3.8.1 Subsidy switching

An applicant may request to switch subsidies immediately upon selection from the waiting list. If the type of subsidy requested is not available at the time, the family may choose to remain at the top of the waiting list until the desired type of subsidy becomes available. If the family rejects the second type of subsidy offered, the family will be removed from the waiting list, and will be so notified in writing.
Participant families may request to switch subsidies -- see Section 10.3.

4. Issuing and Leasing*

*4.1 Issuing**

4.1.1 Initial Term

The initial term of the subsidy is 60 days.

4.1.2 Extensions

The RAA will grant a family one 60 day extension upon written request. The extension may be granted in 30 day increments. HUD regulations do not permit the initial term plus any extensions to exceed 120 days. This 120 day maximum also applies to requests for reasonable accommodation for a disabled person without exception. See Section 4.1.5 -- regulatory waivers.

4.1.2.1 Progress report requirement

At any time during the extended term the RAA may require the family to report its progress in leasing a unit. At a minimum, the report should indicate where the family looked for a unit and why it was rejected. The submission of a detailed, written, progress report to the RAA is mandatory when the family:

- requests a regulatory waiver to extend the term beyond 120 days as a reasonable accommodation; or
- is required to find a new unit as a result of being overhoused on the certificate program

RAAs are encouraged to require a progress report for all extensions beyond 60 days, particularly where the family is "hard-to-house" or has self-identified as having a disability. Review of a family's progress report will provide advance notice of situations where it may be necessary to submit a request for a regulatory waiver; and will facilitate submission of the request to HUD. A family's progress report may also be used proactively to reveal situations of possible discrimination where a family is repeatedly denied housing.

4.1.3 Suspensions*

The term of a family's subsidy will be suspended upon submission of a "Request for Lease Approval" (RFLA). The RAA will allow suspensions during both the initial or extended term after submission of a RFLA.

4.1.3.1 How the length of suspension is determined

Suspension will be for the period of time between the date the RFLA is submitted and the date of the letter in which the result of the final inspection is communicated to the family. If the suspension is for an other reason as stated in Section 4.1.3.2, the RAA will determine an appropriate period not to exceed 120 days.

4.1.3.2 How suspensions are either granted or denied

In all cases, the subsidy's term will automatically be suspended upon submission of a RFLA. Suspensions for other reasons will be granted provided the family can provide documentation acceptable to the RAA that after the subsidy was issued circumstances occurred that halted its housing search.

Suspensions may be granted for the following reasons:

- a lead inspection or deleading is pending;
- a family member becomes temporarily confined to a hospital, nursing home, etc.;
- the family is detained pending trial;
- the family is admitted to a drug rehab or other rehab program; or,
- any other situation that is beyond the family's ability to control, and prevents the family from conducting a housing search.

A subsidy will not be issued to a single individual who is unable to undertake a housing search in the first place, e.g., in the hospital or in prison. Where circumstances prevent the individual from accepting a subsidy, they may be held at the top of the waiting list for a period not to exceed one year, but not if the individual is in prison.

4.1.3.3 Participant suspensions

In situations where a participant is not terminated but voluntarily chooses to enter a substance abuse treatment program the RAA may suspend the subsidy for a period not to exceed 12 months provided the participant:

- is in compliance with program regulations at the time the suspension is requested; and,
- provides advance notice to the RAA; and,
- agrees to the RAA's terms and conditions for the suspension.

For a sample voluntary suspension contract see Attachment 4-A. This contract may be extended up to an additional six months at the discretion of the RAA provided the participant has complied with the terms of the contract, and the extension is to continue in a treatment program.

If a participant enters subsidy holder status due to HAP termination and is prevented from conducting or completing a housing search for medical reasons or other good cause, the RAA may suspend the subsidy.

4.1.4 Expiration

If the subsidy expires the family may file a new application if the waiting list is open.

4.1.5 Regulatory Waivers

A regulatory waiver from HUD is required to extend the term beyond the 120 day maximum. Requests to HUD for a regulatory waiver must be submitted through DHCD in writing, prior to the expiration of the subsidy along with documentation acceptable to the RAA of diligent and unsuccessful search efforts (specific to the reason). Waiver requests will be accepted only for

reasonable accommodation where the family can successfully document extenuating circumstances such as:

- a death or illness which prevented the family from finding a unit;
- whether or not the family submitted RFLAs which the RAA disapproved;
- whether family size or other special requirements made finding a unit difficult.

4.2 Applicants & Portability

If an applicant is not a Massachusetts resident they must reside in the state for 12 months before exercising portability.

Applicants must have been Massachusetts residents at the time of application to exercise portability immediately.

4.3 Lease Approval

4.3.1 Submission of RFLA

The family must submit a RFLA and a copy of the lease during the subsidy's term in the form and manner required by the RAA. A family may submit only one RFLA at a time.

4.3.2 Disapproval of Owners*

The RAA has discretion to reject an owner in accordance with this policy and by considering the circumstances of each individual case.

An RAA may require a prospective landlord to disclose ownership information, to determine if the owner should be rejected or approved. The term "owner" is not merely the nominal entity that holds legal title to the property to be rented, but also covers other persons with an actual interest in the property. Owners are responsible for those they employ, such as agents and management companies; therefore, the RAA may also consider the practices and past performance of agents and management companies in their decision to reject an owner.

An RAA must disapprove the owner, when directed by HUD, if:

- the federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending;
- a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements or;
- the owner is subject to certain federal sanctions and the RAA has been informed of this fact by HUD or some other source;
- the owner has been the subject of equal opportunity enforcement proceedings and the RAA has been directed by HUD to deny approval.

An RAA may deny owner participation if the owner has:

- violated obligations under a housing assistance payments contract under Section 8 of the 1937 Act (42 U.S.C. 1437(f)); or
- committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; or
- engaged in drug-trafficking; or
- the owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based section 8 assistance or leased under any other Federal housing program; or
- a history or practice of renting units that fail to meet State or local housing codes; or
- not paid real estate taxes, fines or assessments.

4.3.3 Providing Information About a Family to Owners*

The selection of a family for program participation is not a representation by the RAA about the family's expected behavior or suitability for tenancy. Determining tenant suitability is the housing owner's responsibility. Owners are permitted and encouraged to screen families on the basis of their tenancy history. An owner may consider a family's background with respect to such factors as:

- payment of rent and utility bills;
- caring for a unit and premises;
- respecting the rights of others to the peaceful enjoyment of their housing;
- drug related criminal activity or other criminal activity that is a threat to the life, safety or property of others (criminal convictions are a matter of public record); and
- compliance with other essential conditions of tenancy.

To assist the owner in obtaining this information the RAA will give the owner:

- the family's current address, as shown in the housing agency records; and,
- the name and address, if known, of the landlord at the family's current and prior address whether subsidized or non-subsidized.

This information may be provided to a person authorized by the owner to screen tenants and/or lease the unit. The RAA may verify third-party authorization and requests for information with the family to determine their legitimacy.

Requests for tenant information must be in writing and may be a part of or accompany the RFLA, or may be contained in a letter or other form created by the property owner, agent, or tenant. The RAA will not provide the owner with other information about the family. The owner is responsible for screening tenants.

In certain types of admissions, such as domestic violence or witness protection, the RAA must exercise caution and discretion in the release of this information.

An RAA must provide a copy of this policy to all owners via the inspection results which are sent directly to owners. This policy must be provided to applicants at the briefing session. Participants briefed prior to October 2, 1995, must be given a copy of this policy at their first reexamination after that date.

5. Voucher Payment Standards*

5.1 Establishing and Revising Payment Standards

Payment standards are presently established at 100% of the FMR. Unless otherwise instructed by DHCD the payment standard will automatically change to reflect 100% of the current FMRs or HUD-approved community-wide exception rent.

Before making revisions to the payment standard, DHCD will consider the ability of participants to obtain decent, affordable housing given the current market conditions, vacancy rates, and other market factors.

5.1.1 Effective date

The effective date of change is as published by HUD. This is usually October 1st of each year, but may be at other times. The new payment standard must be applied as of the effective date.

Exceptions:
If the effective date is in the middle of a month then the *operative date* will be no later than the first of the following month.

5.2 Payment Standard and Exception Rent

Exception rents are limited to 120% of the current FMR. Where HUD has granted exception rents for a community it remains in effect provided it does not exceed 120% of the current FMR. If it exceeds 120% a reduction is required. DHCD or HUD approval is not required to make the reduction.

5.3 Applying the Payment Standard

Use the payment standard that is the lower of:

- the family unit size; or,
- the actual unit size rented by the family.

5.3.1 When changes in the payment standard apply to an existing housing payment.

The payment standard that is applied to a family may be changed only at regular reexamination or when a family moves, as follows:

Rules at regular reexamination

- If the payment standard has increased, the increased payment standard is used.
- If DHCD has adopted new occupancy standards, the payment standard for the appropriate unit size under the new occupancy standard is used.

- If the family's size or composition has changed the payment standard for the appropriate unit size is used.

Rule when a family moves:
When a family moves to another unit, the RAA must apply a different payment standard if one of the following circumstances applies:

- If the payment standard has increased or decreased, the new payment standard is used.
- If DHCD has adopted new occupancy standards, the payment standard for the appropriate unit size under the new occupancy standard is used.
- If the family's size or composition has changed the payment standard for the appropriate unit size is used.

Examples:
When a lower payment standard is adopted, families whose current subsidy is based upon a higher payment standard retain their current standard unless:

- they move or
- the bedroom size for which the family qualifies changes.

A new payment standard must be applied **retroactively** when:

- the annual reexamination has been processed; and
- the anniversary date is later than the operative date; and,
- the tenant share will decrease as a result of the change.

A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, adjusted income, size or composition. Redetermination of the housing assistance payment as a result of an interim reexamination for these reasons does not affect the payment standard applicable to the family if the family remains in place.

A voucher participant receives a utility reimbursement only if the family pays some or all of its utilities and the rent to the owner is less than the housing assistance payment.

6. Rent Reasonableness Determinations

Each RAA must develop a procedure for making rent reasonableness determinations in accordance with HUD regulations.

For both the certificate and voucher programs HUD regulations at 982.305 require the HA to determine that the rent to owner is reasonable. Recent comparables must be part of the rent reasonableness determination.

For a unit leased under the voucher program both the HUD-required Lease Addendum (dated 3/96) and HAP contract (dated 9/95)requires that the rent to the owner must be reasonable in comparison with rents charged for comparable units in the private assisted market, or for units assisted under the Section 8 certificate program. The HA will review any rent increase during the term of the lease to determine whether the rent increase is reasonable. If the increase is not reasonable, the HA will disapprove such increase. It is important to distinguish between a high income-to-rent ratio, and rent reasonableness. They are not related. However, because DHCD gives a federal preference for rent burdened families an RAA may deny a lease based on an excessive income/rent ratio if the family would have a rent burden > 50%. It is appropriate for RAAs to advise voucher participants of the implications of a high income to rent ratio.

Generally, for a unit leased under the certificate program, the total of contract rent plus utility allowance for tenant paid utilities must not exceed the FMR/exception rent limit. Please note that 110% and 120% exception rents can also be rent reasonable based on geographic location.

At the anniversary date of the lease a rent reasonable determination need only be made if the owner requests an increase.

Each RAA must have clear written information to provide to prospective owners before commencing rent negotiations. This information should clarify the RAA's rent reasonableness criteria. It should also set forth the process by which the owner may submit unassisted comps, specifying required documentation.

6.1 Rent Increases in Subsidized Buildings

When leasing Section 8 Existing tenants in subsidized buildings, i.e. Section 236 and 221(d)(3) an RAA should execute the HUD provided Existing Housing subsidized unit HAP contract (see Attachment 6-A). Use of this special HAP contract permits an HA to implement rent increases in accordance with the HUD approved schedule for the project regardless of the individual lease anniversary dates. The special HAP contract specifically excludes the contracted units from the Annual Adjustment Factor (AAF) limitations. There is no comparable Section 8 voucher subsidized unit HAP contract.

There is no regulatory obligation upon an HA to use these special HAP contracts for its Existing participants, nor is it bound by the HUD approved rent schedule by virtue of execution of the subsidized HAP contract. In all cases the requested rent must meet the RAA's rent reasonableness test. Historically these subsidized units have rented below the published FMR

with the result that an HA had no issues around adhering to the HUD approved rent schedules. However, in some recent cases the approved rents have exceeded the published FMR and in those instances the HA must treat the request in exactly the same way as any other owner request for an exception rent.

While it is not possible to execute a subsidized HAP contract retroactively, if the RAA and the owner wish to terminate the Existing HAP contract and enter into the subsidized unit HAP at the current HUD approved rent for in-place certificate tenants, this is permissible provided the RAA determines if the current HUD rent meets its rent reasonableness test. The owner must operate within the regulatory parameters of the building subsidy type and the Section 8 voucher regulations for in-place voucher tenants.

For new lease-up in these buildings, DHCD requires that the subsidized HAP be utilized whether or not the owner requests it. This will insure smooth implementation of the HUD approved rent increases when there is no rent reasonableness issue involved.

7. Special Housing Types*

7.1 Shared Housing

The administration of a shared housing program is described in Chapter 13 of HUD handbook 7420.7, and in 24 CFR 882.301 and 887.501 et seq. Any RAA that receives a request about shared housing should contact DHCD for further guidance.

Shared housing permits two or more families to live in the same unit. Both Section 8 certificate and voucher holders may participate in shared housing. However, at no time can a voucher and a certificate holder participate together in Individual Lease Shared Housing.

There are two types: Individual Lease Shared Housing and Related Lease Shared Housing. DHCD will only allow individual lease shared housing.

To participate in Individual Lease Shared Housing there must be a separate lease, HAP contract, Certificate, and contract rent for each assisted family.

Some important aspects of shared housing are:

An assisted family may share a unit with one or more assisted or unassisted families.

A family assisted in a shared housing unit may not be related by blood, marriage, domestic partnership, or adoption, to a resident owner.

If the unit has more than one bedroom, the owner of a shared housing unit may reside in the unit with the assisted family, and enter into a HAP contract with the agency. However, the resident owner may not be assisted under the Shared Housing HAP contract. This does not apply to one bedroom or smaller units.

Generally, if the family holding the certificate wishes to add household members who are relatives, as defined in the above list of prohibited resident owners, it is considered a change in family composition, and these family members will be added to the household's family composition.

If the family wishes to live with unrelated persons, not included in the above listing of prohibited resident owners, it should be considered a shared housing situation, the original family composition is unchanged, and the unrelated persons will not be assisted.

The entire unit must meet HUD's and DHCD's HQS.

The private space for each assisted family must initially have the same number of bedrooms as stated on the family's section 8 certificate.

Children of different families may not share a bedroom.

Use of a living room, as a living and sleeping area is not permitted in shared housing.

The contract rent, rent reasonableness, and utility allowances for each assisted family are based upon a pro-rated share of the FMR for the entire unit. The FMR for the unit size entered on the assisted family's certificate does not apply. For example, a family with a two-bedroom certificate wishes to live in a four-bedroom unit with an unassisted family. The assisted family therefore has two bedrooms for private space plus use of the other living areas as common space. The FMR would be one-half of the four-bedroom FMR. Likewise, the contract rent and allowances for tenant paid utilities would be one-half of the reasonable rent and utility allowance for a four bedroom unit.

The total tenant payment is determined in accordance with 24 CFR 5.613 et seq. and is based only on the gross annual income of the assisted family.

DHCD will not permit use of a Section 8 Certificate in a related lease Shared Housing situation.

If two assisted families wish to live together, their subsidies must be administered by the same RAA.

7.2 Project Based Certificates

[reserved]

8. Annual and Ongoing Functions

8.1 Annual Reexamination

RAAs must conduct an annual reexamination of family income, size and composition. Adjustments will be made to reflect any changes in the total tenant payment, tenant rent share, and housing assistance payment. The unit will also be inspected at reexamination.

Reexamination activities will begin 90-120 days prior to the anniversary date of the lease and contract. Both the owner and tenant must be notified of their responsibilities during the reexamination process.

*8.2 Interim redetermination of family income and composition**

An RAA must conduct interim redeterminations if any of the following apply at initial, regular, or interim reexamination:

- if a family reports zero income (see section 3.2.2); or,
- if a family member reports they are temporarily employed; or
- if a family member's unemployment benefits will be expiring within the next year. *Although this will usually result in a decrease in income, it may also result in the family member finding employment.*

An RAA may require regularly scheduled interim redeterminations if there is evidence of an unstable income flow.

8.3 Rent Adjustments

8.3.1 Certificate Program

Rent adjustments are not made automatically, they must be requested by the owner in writing. The owner must be in compliance with the terms of the lease and the HAP contract. The unit must also be in decent, safe, and sanitary condition.

The RAA may grant a rent increase not to exceed the Annual Adjustment Factor most recently published by HUD in the Federal Register. The revised rent must be within rent reasonableness parameters.

Contract rents may be adjusted upward or downward, as may be appropriate in accordance with HUD regulations. If the contract rent, adjusted by the applicable AAF, is greater than the rent being charged for a comparable unassisted unit, the rent shall be set at the comparable level. However, the contract rent shall not be reduced below the contract rent on the effective date of the HAP contract.

The increase may be requested on or after the anniversary date. If the owner requests a rent increase after the anniversary date, the increase shall be granted to be effective the month

following the request. If an owner fails to request a rent increase at the anniversary date and subsequently sells the building, the new owner may not request a rent increase until the next anniversary date of the lease.

If an Owner requests a rent increase that exceeds the AAF, but is within the current applicable Fair Market Rent and is rent reasonable, the agency has the discretion to grant the increase if denying it would cause the family to be displaced. A new lease and contract must be executed.

8.3.2 Voucher Program

AAFs are not used for the Section 8 voucher program. Annual rent adjustments are negotiated between the owner and the family. However, the RAA must make a determination of rent reasonableness, see Section 6.

8.3.3 Special Adjustments

Subject to HUD approval, special adjustments may be granted to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes,, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates) but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments. The Owner shall submit financial statements to the RAA which clearly support the increase.

*8.4 Family Moves**

If a participant wants to move to another unit outside the area served by the RAA, the participant must be given Attachment 3-E.

If a participant wants to withdraw from the Section 8 program (i.e., give up his/her subsidy), the participant must be given Attachment 3-E. If the participant withdraws from the Section 8 program, the participant must be given a standard termination notice.

Use by RAAs of Attachment 3-E will be in addition to, and not be a substitute for, compliance with any other notice requirements contained in state or federal law or regulations governing administration of the Section 8 program; e.g. the explanation of portability as described in HUD notice 94-12.

An RAA may restrict the number of moves by a participant family to one per year in instances where the RAA is able to establish a pattern of frequent moves without good cause.

Refer to Section 3.7, Subsidy Standards for appropriate subsidy size to be issued when a family moves.

8.5 Utility Allowance

In SHARP, Teller, RDAL, tax credit, Section 236 or Section 231(d)(3) or any development on the most current MHFA "Housing List", the RAA may use the utility allowance schedule of the local HA or the building provided:

- the local HA administers a Section 8 program
- the local HA utility allowance is updated annually; and,
- the local HA utility allowance schedule has been updated within the past year, or if it has not, the HA has documented that it has completed a review of the schedule within the past year and it was not updated because the change was less than ten percent in any single category.

It is the Owner/Manager's responsibility to obtain the required information from the local HA.

In any instance where a subsidized building uses its own utility schedule, the owner/manager must provide the RAA with the effective date of the schedule in use, and the date of the last utility company survey. Because these schedules are based solely on usage specific to the project and bedroom size, the cost to the tenant may be significantly lower than that indicated by our regionally set schedules.

In any instance where a subsidized building utility schedule is outdated, that schedule will still be used for setting the initial lease-up gross rent. For future annual reexaminations the RAA utility schedule will be used until such time as the RAA is provided with an updated schedule by the project owner/manager.

RAA utility allowance schedules will be updated annually so that the revised schedule may be ready to implement each year with the newly published FMRs (usually October 1) The revised schedule must be submitted to DHCD along with the completed rate schedules provided in Attachment 8-A. The schedule must be revised if the change in any category is 10% or greater. For the HUD-approved methodology used by DHCD for establishing the utility allowances see Attachment 8-B.

8.5.1 Determining unit size for the purpose of applying the utility allowance.

To apply the utility allowance properly, each RAA must ensure that there is appropriate and adequate communication between Inspectors and Program Representatives.
Prior to the inspection, the family's subsidy size must be conveyed to the inspector. There should be a place for this on the RFLA.

Rooms other than the living room that must be used as bedrooms for a unit to meet HQS requirements must be counted as bedrooms for utility allowance purposes.

As a result of getting approval from HUD to count only those rooms that are obviously bedrooms for utility allowance purposes, it is possible for the same unit to be designated differently based on family needs.

Example:

A 5 room unit consisting of a living room, dining room, kitchen and two bedrooms leased by a 2BR eligible family would be designated a 2BR for utility allowance purposes. However, if at a later date the family composition changes to 3BR eligible, the family may remain in place with a new lease and contract and have the unit designated as a 3BR unit for rent reasonableness and utility allowance purposes. This is because the dining room could be reclassified as a bedroom provided it meets HQS bedroom standards.

9. Informal Hearings and Reviews*

9.1 General Requirements

The term "appeal", as used herein, refers to both informal reviews and informal hearings. The terms "review" and "hearing" are used only when necessary to distinguish between the two.

Applicants and participants are provided an opportunity to present objections to certain RAA decisions through informal reviews and hearings. Depending on the decision they object to, an individual may be entitled to either a review or hearing. Generally "reviews" are for decisions pertaining to applicants while "hearings" are for decisions pertaining to participants.

Informal hearing provisions for the denial or termination of assistance on the basis of ineligible immigration status is contained in 24 CFR 5.514.

If a decision may be appealed, the RAA must give the family prompt written notice. The notice must state:

1. The reasons for the decision.
2. That if the family does not agree with the decision, it may request an appeal.
3. The procedure for the family to request an appeal.
4. The deadline for the family to request an appeal.

Each RAA must establish a reasonable process for objections to be received and considered. The review or hearing may be conducted by anyone designated by the RAA, other than a person who made or approved the original decision under review or his subordinate.

Once the appeal is scheduled, the family will have one opportunity to reschedule if they can not attend. The RAA must be able to either rectify the situation or issue the subsidy to another eligible family.

Any extensions granted by the RAA for submitting additional materials relative to the appeal should be limited in duration.

When the aggrieved party notifies the RAA that he can not attend the appeal, e.g., incarceration, the RAA must offer the appeal to be conducted either by mail or by proxy. The obligation to provide an incarcerated individual the opportunity for an appeal shall be considered to be met if the RAA provides the participant with an opportunity to send a designated proxy to the hearing or to conduct the appeal by mail. The RAA is not required to conduct the appeal at the site or to provide more than one extension of the hearing date.

9.2 When Decisions are Effective

All decisions regarding denial or termination of assistance are effective at the completion of the RAA appeal process. If a participant appeals a termination decision to DHCD, assistance to the participant shall not continue during DHCD's appeal process. If DHCD overturns the RAA decision, the participant must be reinstated; and, if they remain in the same unit the owner may be paid retroactively.

9.3 Informal Reviews

An informal review is required when an RAA denies an applicant:

- preference status; or
- admission to the Section 8 program.

Informal reviews may be conducted in writing; a meeting between the RAA representative and the aggrieved party is recommended, but not required.

The RAA will notify the applicant of its final decision after the informal review, including a brief statement of the reasons for the final decision. Informal review decisions made by the RAA are final and can not be appealed to DHCD.

An informal review is NOT required for decisions concerning:

- discretionary administrative determinations by the RAA;
- general policy issues or class grievances;
- a determination of the family unit size under the RAA's subsidy standards;
- an RAA determination to deny an extension or suspension of a subsidy's term; or when a subsidy expires;
- an RAA determination to deny a RFLA or to reject a proposed lease;
- an RAA determination that a unit does not comply with HQS; or,
- an RAA determination that the unit does not meet HUD's or DHCD's HQS because of the family size or composition.

9.4 Informal Hearing

An informal hearing must be offered to participants to consider whether certain RAA decisions relating to the individual circumstances of the family are in accordance with the law, HUD regulations and RAA policies.

For decisions regarding termination of assistance, the RAA must give the opportunity for an informal hearing before the RAA terminates housing assistance payments for the family. Only decisions regarding termination of assistance are appealable to DHCD.

9.4.1 Informal Hearing Required

An informal hearing must be offered when the RAA makes a determination:

- That a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the RAA subsidy standards, or the RAA determination to deny the family's request for an exception from the standards.
- To terminate assistance because of the family's action or failure to act.
- To terminate assistance because the family has been absent from the assisted unit for longer than the maximum period permitted under RAA policy.

In the following cases the RAA must notify the family that they may ask the RAA to explain its decision, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the RAA utility allowance schedule.
- A determination of the family unit size under the RAA subsidy standards.
- Discretionary administrative determinations by the RAA.

9.4.2 Informal Hearing not Required

An informal hearing is NOT required for decisions concerning:

- general policy issues or class grievances;
- establishment of the RAA schedule of utility allowances;
- an RAA determination to deny an extension or suspension of a subsidy's term; or when a subsidy expires;
- an RAA determination to deny a RFLA;
- an RAA determination that an assisted unit does not comply with HQS; (However, the RAA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family);
- an RAA determination that the unit does not comply with HQS because of the family size;

- a determination by the RAA to exercise or not to exercise any right or remedy against the owner under a HAP contract;

9.4.3 Procedure for Informal Hearings

This procedure must be followed by the RAA when conducting an informal hearing. This procedure is not mandatory for conducting an informal review; however, DHCD recommends that RAAs follow a similar procedure at all levels of appeal. Each agency may add to these procedures, with DHCD approval.

9.4.3.1 Notice Requirement

For any determination where an informal hearing must be offered (see section 9.4.1) the family must be given prompt written notice of the decision. The notice must contain the following information:

1. A brief statement of the reasons for the decision.
2. The issues involved in the RAA's decision.
3. The date the decision is effective.
4. The family's right to an informal hearing, or other available remedy.
5. How the family can request a hearing.
6. What time frame the family has to request a hearing (usually 10 working days from the date of mailing).
7. That if the family does not avail itself of the opportunity for an informal hearing at the RAA, it may not appeal a termination decision to DHCD.

A family that requests an informal hearing shall receive adequate notice of the time and place of the informal hearing. The notice shall contain:

1. A brief, but specific, statement of the reasons the informal hearing is being held.
2. A statement indicating that the decision of the RAA shall be based upon the evidence presented at the informal hearing, and that a family must bring with them to the hearing all documents on which it will rely and all witness who can offer relevant testimony;
3. A statement regarding the family's right to be represented by legal counsel at the hearing at its own expense.
4. A discussion of discovery rights - the opportunity for both the RAA and family to examine documents before the hearing.

The RAA must schedule the hearing in a reasonably expeditious manner; DHCD recommends 5-7 working days from receipt of the request.

Reasonable notice of the time and date of the hearing must be given to all parties concerned (3-5 working days before the hearing.

9.4.3.2 Discovery

The family must be given the opportunity to examine before the hearing any RAA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at it's

expense. If the RAA does not make the document available for examination on request of the family the RAA may not rely on the document at the hearing.

The RAA must be given the opportunity to examine at the RAA offices before the hearing any family documents that are directly relevant to the hearing. The RAA must be allowed to copy any such document at the RAA's expense. If the family does not make the document available for examination on request of the RAA, the family may not rely on the document at the hearing.

For decisions regarding termination of assistance, the RAA must conduct the hearing prior to terminating assistance. The family may request one postponement of no more than a week after the original scheduled hearing date. More than a week may be granted in exceptional circumstances.

The RAA may implement the following changes prior to a hearing:

- Changes in TTP or tenant rent.
- Denial of a new certificate for a family that wants to move.
- Unit size determinations for a family that wants to move.

9.4.3.3 Other Persons Affected

Any person who can demonstrate that they may be substantially and specifically affected by the proceeding may be allowed to participate in the hearing, in whole or in part, or they may be allowed to present evidence, either orally or in writing. It is not the RAA's responsibility to determine if there may be anyone who meets this criterion. However, if someone, such as an owner, learns of the hearing on their own, and claims to have a vested interest in the outcome of the hearing, the RAA must determine if they qualify under this section. This claim must be made prior to the hearing so that the RAA has ample opportunity to consider the claim. Each agency should set a deadline for consideration of these claims, such as 3 working days before the hearing.

9.4.3.4 During the Hearing

All parties should be notified of all persons who will be attending the hearing.

At its own expense, the family may be represented by a lawyer or other representative at the hearing.

The RAA must designate a "hearing officer" who will conduct the informal hearings. The hearing officer may not be the person who made or approved the original decision under review or a subordinate of that person. The hearing officer may regulate the conduct of the hearing in accordance with the RAA hearing procedures.

9.4.3.5 Evidence

Both the family and the staff person(s) who made the decision being appealed may present evidence to the hearing officer. Each party may call witnesses, cross-examine witnesses, and submit rebuttal evidence. Only information presented at the hearing may be considered by the hearing officer. The hearing officer may not request additional information that is not presented as evidence at the hearing.

At the beginning of the hearing, the hearing officer shall state the date and time, and list the alleged reasons for the decision being appealed. The RAA may change the order of witnesses; however, the recommended order of presenting is as follows:

1. The family
2. The staff person who made the original decision (or recommendation)
3. The staff person's supervisor, if involved
4. Rebuttal by family

DHCD requires that the hearings be tape-recorded and that fact shall be announced to all parties by the hearing officer at the beginning of the hearing. The family and/or their attorney may also record the proceedings, provided they so notify the hearing officer.

The RAA and the family must be given the opportunity to present relevant evidence, and question any witnesses. Evidence may be as oral testimony or written documents. If the HA is relying on documents from the family's file, those documents must be presented as evidence at the informal hearing. At the conclusion of the hearing, each party shall be given the opportunity to make copies of the other party's written evidence. At the informal hearing the hearing officer need not observe the rules of evidence observed by courts. Evidence may be admitted if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

Rules of privilege recognized by law shall be observed.

At the conclusion of the informal hearing, the HA may hold the hearing open for a specific period of time for the purpose of receiving further documents. If the documents are not submitted by the specified time, the HA may issue its decision.

9.4.3.6 Issuance of decision

The hearing officer must issue a written decision within 10 working days of the hearing. The decision must be based only upon the evidence presented at the hearing.

All parties shall be notified in writing of the final decision. The RAA will send a copy of the decision to DHCD's Bureau of Federal Rental Assistance. If the family is represented by counsel, the RAA is only obligated to send notification to counsel. The notice shall state:

- the reasons for the decision, including a determination of each issue of fact or law necessary to the decision; and
- that the family has the right to appeal a termination decision to DHCD within 14 days of the date of the notice.

Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing.

An official record of the hearing must be made available to the family if they so request. The family must pay for any transcription of recordings before the agency will make the transcript available to the family.

Copies of all decisions the RAA overturns due to mitigating circumstances will be provided to DHCD. DHCD will review and periodically distribute information regarding these decisions to ensure consistency in decision making among all RAAs.

9.4.3.7 Effect of decision

The RAA is not bound by a hearing decision:

- concerning a matter for which the RAA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the RAA hearing procedures;
- contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.

If the RAA determines that it is not bound by a hearing decision, the RAA must promptly notify the family of the determination, and of the reasons for the determination.

9.5 Appeals to DHCD

Of the RAA determinations where an informal hearing must be offered, only decisions regarding termination of assistance may be appealed to DHCD. The HUD requirement for an informal hearing is considered satisfied at the RAA level.

When an RAA has completed the informal hearing process and has upheld the initial decision to terminate assistance, the decision letter must inform the family of its right to an appeal at DHCD. The notice must state that the appeal must be received by DHCD's Bureau of Federal Rental Assistance within 14 days from the date of the decision letter. Appeals not received within 14 days will not be accepted and will be returned to the sender.

Appeals received within the 14 day period will be forwarded to DHCD's Office of the Chief Counsel. DHCD's hearing officer will send a notice requesting that the RAA and the aggrieved party submit any written documentation that they would like to be considered in support of their position. The hearing officer will review all submitted materials and will make a decision after consideration of the facts presented. A written decision will be sent to both parties.

The outcome of any Section 8 appeal is dependent to a large extent on the individual circumstances of each case. However, this is particularly true with cases that involve allegations of domestic violence. For this reason, DHCD reserves the right, in domestic violence cases, to review all the circumstances of each case, including everything that has happened while the family awaits an appeal, and make a determination based on all the information available. The implications of this policy are that there will be occasions where the RAA has acted correctly in making a decision, yet DHCD overturns the decision because the intervening circumstances are sufficient to change the balance of mitigating factors and negative information.

10. Occupancy

10.1 Who Can Live in the Assisted Unit

RAAs will not discriminate on the basis of family characteristics such as:

- unit size needed
- unwed parents
- children born out of wedlock
- recipients of public assistance
- presence of children
- age, sex, color, religion, national origin or disability

Approval of family composition or the addition of family members, foster children, or live-in aides will not be unreasonably withheld by the RAA.

10.1.1 At Admission

At admission, the RAA must approve the family composition so a subsidy of the appropriate size can be issued. The RAA may deny admission to a family or to individual family members as permitted by HUD regulations and as further defined in this administrative plan.

Family members approved by the RAA will be listed on the HAP contract..

10.1.2 During the Family's Participation in the Program

After the HAP contract is executed, family members may be added to the assisted household only with approval of both the owner and the RAA. There are three exceptions:

- birth;
- adoption; or,
- court-awarded custody of a child.

The family must immediately notify the RAA of any change in family composition.

A family's failure to obtain approval is a violation of family obligations that will result in termination from the program; and, is a lease violation which may result in eviction from the unit.

The addition of new household members in the first year of the lease where the addition would cause the unit to not meet HQS requirements will not be permitted. If the owner and the family agree to a mutual termination and the additional occupant is approved by the RAA, the RAA will issue a new subsidy and the family may move.

10.2 Approval of Additional Occupants

1. The family representative must notify both the RAA and the owner in writing.

2. The owner must send his written decision to both the family and the RAA.
3. Upon receipt of the family's request, the RAA will obtain the necessary documentation from the individual[s] to be added to the household, and will perform a standard eligibility check that includes determination of eligible immigration status and a CORI.
4. When the eligibility check is complete, the RAA will send its decision to both the owner and family. If the additional occupant is approved by the RAA, the notice to the owner must state that failure to respond to the notice within one calendar month will constitute approval, and will have the effect of amending both the lease and the HAP contract.
5. If approved, a copy of the RAA approval and the owner approval, if received, will be attached to the HAP contract.

It is the responsibility of the family, not the RAA, to initially request and obtain the owner's written approval for the addition of family members.

10.2.1 In the Event of Conflict

Should the owner not agree to the addition of family members, the RAA will abide by that decision while the assisted family remains in that unit. If the owner denies the request, the family's options are as follows:

- move by terminating the lease in accordance with its terms; or
- seek mutual termination if the family is in the first year of the lease; or
- remain in unit with the family composition unchanged.

If the owner approves the request to add family members but the RAA does not; e.g. unacceptable CORI, the family must abide by the RAA decision and the individual(s) may not move in. If the family allows the individual(s) to move in the RAA will terminate assistance to the family.

10.3 Switching Subsidies and Changing Subsidies in Place

A participant family requesting to switch subsidies will be asked to sign a form requesting an alternate subsidy. If the type of subsidy being requested is available at the time of the request, the exchange must be made by the RAA and key components of the new program must be explained to the family. If the exchange is made during a housing search period, no additional time will be given to the family. The expiration date will be measured from the date the original certificate or voucher was issued.

If the type of subsidy being requested is not available at the time of the request, the RAA is not obligated to establish a waiting list for families wishing to switch subsidies. However, the family may make the request to switch subsidies as often as they like. The RAA must send a letter that:

- explains the process;
- provides the name and telephone number of the person designated to handle all such requests;
- indicates appropriate call back periods; and,
- provides a reasonable estimate of when a subsidy may become available.

In order to switch subsidies and move to a new unit:

- there must be a subsidy available to make the switch; and
- the family must be able to provide proper notice in accordance with the terms of their lease, or be able to obtain a mutual termination from the owner.

A participant family may request to switch from a voucher to a certificate in order to participate in Individual Lease Shared Housing.

Changing Subsidies in Place

A participant family may request to switch subsidies and remain in place only if they:

- are on the certificate program; and
- are overhoused; and,
- switching to a voucher would allow them to remain in place.

The swap may be made only if the owner is willing to mutually terminate and enter into a new lease and HAP contract. In any other circumstances, the family may not switch subsidies and stay in the same unit.

*10.4 Family Break-up**

All decisions regarding the disposition of a subsidy in the event of a family break-up will be made by the RAA on a case-by-case basis after considering the circumstances of each individual case. Decisions made by the RAA are final and not subject to appeal. The RAA can not create two subsidies from one.

If a court determines the disposition of a family's subsidy in a divorce or separation under a settlement or judicial decree, the RAA is bound by the court's determination of which family members continue to participate in the program. It is preferable that these decisions are made by the courts, who are presumed to have considered what is in the best interest of the family.

If the court does not or will not make a determination the RAA has discretion to determine who keeps the subsidy first considering:

1. The interest of minor children.
2. The interests of ill, elderly or disabled family members.
3. Domestic violence situations and whether family members [the victims not the perpetrators] were forced to leave the unit as a result of actual or threatened physical violence by a spouse or other member of the household.
4. Family members remaining in the original assisted unit.
5. Other factors as appropriate.

Generally, the interests of minor children will take precedence over all other claims and the subsidy will remain with the family member who has primary custody of the minor children.

RAAs must recognize that verification of legal custody may not always be possible, particularly in domestic violence situations. RAAs are encouraged to make the best possible decisions in this regard. Custody or guardianship does not necessarily have to be court-ordered, but it is subject to verification by the RAA.

In situations where the parents have separated previously and custody is given to the parent who is not a member of the assisted household, then the subsidy will remain with the children, as members of the assisted household, provided the new household remains program eligible. The RAA will terminate the HAP contract as soon as possible after notification of the new custody arrangement.

In situations of split custody, where each adult member receives custody of a child, then the subsidy will remain with the original assisted unit. If no one remains in the original assisted unit, and both parents were members of the assisted household then the RAA has discretion to determine who retains the subsidy considering this policy and the circumstances of the individual case.

If there are no minor children, or if each adult has one or more, or in cases of joint custody (split visitation) then the current head of household of record will retain the subsidy except where items 2 & 3 above are a factor.

When the family break-up is voluntary, the subsidy will not be transferred to a remaining family member if that individual was not listed as a member of the household with the RAA for six months immediately prior to the transfer.

Each RAA must have a procedure for making these decisions at their agency.

10.4.1 Remaining family members in special programs

DHCD's policy for determining the eligibility of remaining family members in special programs is as stated in Section 10.4. However, if there is no longer a family member that is eligible for the supportive services offered by that special program, that family should be issued a standard subsidy so that other eligible families may be assisted under the special program.

11. Termination of Assistance

This section states the grounds on which the RAA may terminate assistance. It does not address termination of tenancy by the family or owner, or HAP contract termination for reasons other than terminating assistance to a family.

HUD's conforming rule, effective October 2, 1995, expanded the reasons a family may be terminated from the program. An RAA may not terminate for any of these "new" reasons until notice has been provided to current participants by mail. Reasons for termination must be provided to all new applicants at the briefing.

Termination of assistance for a participant may include any or all of the following:

- refusing to enter into a HAP contract or approve a lease;
- terminating housing assistance payments under an outstanding HAP contract; and,
- refusing to process or provide assistance under portability procedures.

Where criminal activity is a factor, the RAA may consider the character of the crime and whether family members have participated in, colluded in, or benefited from criminal activity, and the impact of any termination on other family members including children. The RAA may also consider the effects of their action or non-action on the program and community, including: 1) how termination of assistance for criminal activity by assisted families may discourage criminal activity in the community; and 2) the effect of the RAA termination policy on the Section 8 program and the ability of program families to find good housing.

11.1 Grounds for Termination of Assistance (982.552)

Termination of assistance may occur at any time there are grounds for termination. RAAs must inform families of the reasons for terminating assistance at the initial briefing and again at reexamination. If a participant claims that they failed to receive such information that fact will not prevent the participant from being terminated in accordance with HUD regulations and this policy.

For any terminable offense, the RAA must exercise responsible discretion on a case by case basis and may consider all of the circumstances of the individual case, including seriousness of an offense, the extent of participation or culpability of individual family members, and the effects of program sanctions on uninvolved family members.

Generally, DHCD will not apply HUD's reasons for terminating assistance retroactively and/or punitively to current participants that have since maintained good tenancies. For example, a participant that was evicted from public housing in 1987 may not be terminated from the program because of the 1987 eviction; however, that may be a reason for denying assistance to an applicant if the reason for the eviction was egregious.

An RAA has discretion to consider mitigating factors presented by the family when deciding whether or not to terminate assistance. See section 13.2 for a further discussion of mitigating circumstances.

In the absence of mitigating circumstances, the RAA will terminate assistance to a participant for the following reasons: (see sections 11.1.1 - 11.1.2 for further direction on when to terminate assistance under each of these categories)

1. If the family violates any Family Obligations as listed in HUD regulations for the Section 8 program.

2. If any family member commits drug related or violent criminal activity.

3. If any family member commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

4. If the family owes rent or other amounts to the RAA (including amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease), and either refuses to enter into a repayment agreement, or is not complying with the terms of their repayment agreement.

5. If the family breaches an agreement with an HA to pay amounts owed to the HA, or amounts paid to an owner by the HA. in connection with Section 8, public housing assistance under the 1937 Act, or state-assisted public housing and is not complying with the terms of their repayment agreement.

6. If the family has engaged in or threatened, abusive or violent behavior toward RAA personnel.

The RAA will not terminate a family's assistance for the following:

- Expected tenant behavior.
- If a family participating in the FSS program fails to comply with the family's FSS Contract of Participation.
- If any family member has ever been evicted from public housing.
- If an RAA has ever terminated assistance under the certificate or voucher program for any family member.

11.1.1 Family Obligations

Family obligations are listed on the certificate or voucher provided to the family upon admission to the program and must be provided in the information packet the family receives at the briefing. A list of these family obligations must be sent to all program participants who did not receive this information upon selection.

11.1.1.1 Supplying required information

The family must supply such certification, release, information, or documentation as the RAA or HUD determines to be necessary and relevant including but not limited to:

- Disclosure and verification of Social Security Numbers.
- Signed consent forms for the obtaining of wage and claim information from the State Wage Information Collection Agencies.
- Submissions required for an annual or interim reexamination of family income.
- Evidence of eligible immigration status.
- Verification of child care expenses.
- Verification of medical expenses for families seeking a deduction.

Information supplied by the family must be true and complete. If any family member fails to provide all required information or fails to respond to any written RAA requests for information within the time frame required by the RAA or any extension granted, they will be terminated from the program. If an RAA chooses to grant extensions for submitting information they should be limited in number and duration.

The RAA may terminate assistance in situations where any family member deliberately conceals information and the information withheld would have been grounds for denying assistance.

11.1.1.2 HQS breach caused by family

The family is responsible for a breach of HUD's HQS that is caused by any of the following:

- failure to pay for tenant-supplied utilities
- failure to provide and maintain tenant-supplied appliances
- damage caused by family or guest to unit or premises (beyond ordinary wear & tear)

The family must correct the defect within:

- 24 hours for life-threatening violations; and
- 30 calendar days for other violations.

The RAA may approve appropriate extensions if the HQS failure is non-life threatening and does not affect the safety of the resident or other occupants of the building. If the family fails to correct the violation within the required time frame they will be terminated from the program.

Each RAA must develop a fair and effective system of enforcement that attempts to match the severity of the problem to the severity of the enforcement and permits a range of enforcement actions, including the use of warnings, extensions, and termination. To the extent practicable, each RAA must attempt to distinguish between damage that is accidental or minor as opposed to damage caused by reckless or malicious action by the family and use that information in determining appropriate enforcement actions. In most instances termination of assistance is appropriate only when other compliance measures have failed.

RAA enforcement procedures must attempt to inform and educate families as to applicable HQS standards and how their action or non-action relative to HQS violations may impact their ability to continue to receive rental assistance. When a family is cited for a family-caused HQS violation the RAA must provide written notice to the family, the owner, and any third party that may be

designated by the family to receive notices from the RAA relative to their program participation. The notice must:

- Be issued promptly after the violation is cited.
- Include a clear description of the violation, including how it violates program requirements.
- indicate the time frame for correcting the violation; and the consequences of failing to correct the violation including actions that will be taken by the RAA and actions that may be taken by the owner.
- Strongly recommend that the tenant contact the owner to discuss the repair method prior to correcting any tenant caused violation.
- Include a statement regarding a disabled persons right to request reasonable accommodation and the name of the agency contact person.

The RAA's notice to the owner must:

1. Inform the owner that the family may be terminated from the program if the violations are not corrected and that if the family is terminated, the HAP contract will also be terminated with no further housing assistance payments from the RAA.
2. Advise the owner that he may make the necessary repairs and charge the family's security deposit in accordance with state law; or, if the family is occupying the unit pursuant to a pre-1995 HAP contract, file a damage claim with the RAA at the end of the tenancy.
3. Advise the owner that if the violation also constitutes a lease violation and the family refuses or is unable to make the repairs, the owner may make the repairs, bill the family, and issue notice to terminate the tenancy in accordance with the lease and state law. *(for rules regarding termination of HAP payments when the owner terminates the lease see-982.311(b)*
4. Recommend that if the owner has any questions concerning the family's method or ability to correct the violation, they should contact the family directly.

Actions that may be taken by the owner include but are not limited to the following:

- No action, the family is responsible for making repairs.
- Owner makes the necessary repairs and charges the family's security deposit for the expense at the end of the tenancy.
- If the HQS violation also constitutes a lease violation and the tenant refuses or is unable to make the repairs, the owner may make the repair(s), bill the tenant, and issue notice to terminate tenancy.

When it is not obvious that the damage was tenant-caused, the burden of proof is on the owner, as evidenced by the statement of condition provided to the family at the beginning of their occupancy. If there is no statement of condition the RAA may use the initial inspection report to assess damage. The RAA may also consider whether the owner has a "history or practice" of violating HQS or DHCD housing standards

If a participant is terminated for failing to correct an HQS violation and the violation is cured after the effective date of termination, generally, the participant should not be reinstated. Because

termination of assistance has occurred, that would indicate that other compliance measures, such as the granting of appropriate extensions, etc., have been taken and have failed. Any request for reasonable accommodation must have been submitted by the family and addressed by the RAA prior to the effective date of the termination. If the RAA determines that there were mitigating circumstances, and the family is reinstated in the same unit a new lease & contract must be executed.

11.1.1.3 Allowing inspection of the dwelling unit by the RAA

The family must allow the RAA to inspect the dwelling unit at reasonable times and after reasonable notice.

It is the family's responsibility to arrange for access to the unit at all times, even if the family will be absent from the unit.

Families should be notified that although inspections are required annually, as a result of follow-up inspections and audit inspections by both DHCD and the RAA the unit may be inspected several times in a year.

To accommodate working families RAA's are strongly encouraged to schedule appointments for a specific time, when requested. If an RAA is unable to keep an appointment for an inspection, the family should be notified as early as possible on the date of inspection or sooner if possible. RAA's are also encouraged to extended inspection hours into the early evening, perhaps one day a week, to accommodate working families.

In instances where the unit is subject to repeated inspections due to the owner's failure to make the required repairs, an undue burden may be placed on working families. In these instances, the RAA may suggest that the family ask the owner of the building to be present for re-inspections. If the family does not wish to allow the owner access to their unit, they remain responsible to make certain an adult will be present for all scheduled inspections. If an adult family member cannot be present for an inspection during the inspector's regular working hours, the family must make arrangements for another adult to be present in the unit at the scheduled time.

An RAA may terminate assistance to a family for failure to provide access to the unit if:

- the RAA is unable to gain access to the unit for at least two scheduled inspections within one reexamination period; and,
- the family did not cancel or call to reschedule the inspection(s) for a more convenient time; and
- the RAA did not cancel the inspections without notifying the family the day of the inspection.

11.1.1.4 Violation of lease

The family may not commit any serious or repeated violation of the lease.

The lease is a contract between the family and the owner. Generally, RAA's will take no action against landlord claims of tenant misbehavior, will not assume the owners responsibility for enforcing the lease, and will not interject itself in the relationship between the family and the owner where the owner may seek remedy and/or mediation through the courts. Where an owner obtains a court-ordered eviction (Judgment for Possession) for serious or repeated lease violations, the RAA may terminate that family from the program after conducting an independent investigation into the cause for eviction.

The RAA, at its discretion and in situations where the owner is unable or unwilling to act, upon determining that the nature of the lease violation(s) are having a serious impact on individual residents or the housing development as a whole, may terminate assistance to a family where the RAA is able to establish repeated or serious lease violations by the family. For example, police reports documenting regular disturbances at the unit.

Vermin and rodent infestation caused by trash accumulation from poor family housekeeping is not a tenant-caused HQS violation but it may be a lease violation. An owner may evict if poor housekeeping creates a serious or repeated violation of the lease.

11.1.1.5 Family notice of move or lease termination

Before vacating the dwelling unit, the family must notify both the RAA and the owner in writing; and, in accordance with the terms of the lease.

11.1.1.6 Owner eviction notice

The family must promptly give the RAA a copy of any owner eviction notice.

11.1.1.7 Use and occupancy of unit

The family must use the assisted unit for residence by the family. The unit must be family's only residence.

The composition of the assisted family residing in the unit must be approved by the RAA.

The family must promptly notify the RAA if any family member no longer resides in the unit; and of the birth, adoption, or court-awarded custody of a child;

The family must request RAA approval to add any other family member, live-in aide or foster children as an occupant of the unit. Depending upon the form of lease, owner approval may also be required. Additional household member(s) will be subject to CORI checks by the RAA and required to submit other standard documentation.

The dwelling unit (or, in the case of Shared Housing, the portion thereof) must be used solely for residence by the family. The family shall not assign the lease or transfer the unit.

11.1.1.8 Absence from unit*

The family must supply any information or certification requested by the RAA to verify that the family is living in the unit, or relating to family absence from the unit, including any RAA-requested information or certification on the purposes of family absences. The family must cooperate with the RAA for this purpose. If the family will be absent from the unit for more than 30 days it must promptly notify both the owner and the RAA in writing, and obtain approval from the RAA.

To obtain RAA approval, the family must:

1. satisfy notice requirements; and
2. provide documentation acceptable to the RAA regarding the length of absence and the reason for the absence; and,
3. affirm their intent to return to the unit at the end of the leave period; and,
4. agree to be responsible for receiving and responding to all notices sent by the RAA to the unit during periods of absence; and
5. pay rent to the owner and pay for utilities while they are absent; and.
6. make arrangements for the unit to be available for RAA inspections as necessary.

If this procedure is not followed, the unit will be considered abandoned and the RAA will terminate housing assistance payments and the family's participation in the program.

The RAA's absence from unit policy must be provided to applicants at the initial briefing and to current participants by mail.

11.1.1.8.1 Length of absence

Absences for up to 90 consecutive days are permitted due to:

- hospitalization;
- commitment to a short-term drug or alcohol treatment program;
- verifiable medical or other family emergencies; or
- other reasons to be determined by the RAA.

A 90 day period is consistent with other programs administered by DHCD's Bureau of Federal Rental Assistance.

An absence of more than 90 consecutive days is considered a "prolonged absence" and will not be permitted. In extraordinary circumstances, to be decided by the RAA on a case-by-case basis, where a family may be absent for more than 90 days, the subsidy may be frozen for up to one year. Housing assistance payments are not continued during periods when the subsidy is frozen, only during an authorized absence of up to 90 days.

Imprisonment is not a valid reason for an absence of more than 30 days. If imprisonment is for drug related or violent criminal activity, the participant may be terminated in accordance with that policy.

See Section 4.1.3.3. for absences due to entering a residential treatment facility.

Reinstatement

In cases where assistance was terminated for an unauthorized absence from the unit for either:

1. entering a residential treatment program;
   or,
2. incarceration for other than a drug-related or violent criminal activity;

the RAA may reinstate the family if:

1. the family member successfully completes the residential treatment program as evidenced by a written statement from the program's Director;
   or
2. the family member was not convicted of the crime.

In all cases there is a one year limit on reinstatement, measured from the date the termination is effective. Reinstatement is subject to the availability of a subsidy.

11.1.1.8.2 Notice Requirements

If the period of absence will be for 30 days or less the family is not required to provide notice.

If the period of absence will be for more than 30 days, the family must submit a request for RAA approval of extended absence as soon as possible, but not less than 21 days from the date in which the family is absent from the subsidized unit.

If RAA determines that the family has abandoned the unit or is absent for longer than the maximum period permitted the RAA will terminate housing assistance payments and the family's participation in the program.

If the RAA receives information that a family has been absent from their unit for an extended period, they may require the family to provide any information or certification that adequately explains the report of absence and verifies that the family has not been absent for more than 30 days. The agency may verify presence or absence by sending letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors. School enrollment records and receipt of welfare assistance may also be used to determine where a family resides. If the agency receives information that the family has been absent from their unit, has not received notice from the family, and is unable to verify presence of the family in the unit within 30 days of the receipt of information, the RAA may consider the unit abandoned and may begin the process of terminating the HAP contract.

For termination due to abandonment the RAA must give the family an opportunity for an informal hearing. All termination and hearing notices will be sent to the participant at their address of record by regular and certified mail, and shall constitute proper notice

.

11.1.1.9 Interest in unit

The family must not own or have any interest in the dwelling unit (other than in a manufactured home). If the Owner is a cooperative, the Family may be a member of the cooperative.

11.1.1.10 Fraud and other program violation

The family members must not commit fraud, bribery or any other corrupt or criminal act in connection with any federal or state housing assistance program. HUD regulations pertaining to fraud are found at 24 CFR part 792.

11.1.1.11 Crime by family members

The family members must not engage in drug related criminal activity or violent criminal activity. See section 12.

11.1.1.12 Other housing assistance

An assisted family or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative federal, State or local housing assistance program.

11.1.2 When a Family Owes Money to an RAA*

HUD's policy regarding the payment of damage claims and vacancy loss changed effective October 2, 1995. RAA's may not pay damage claims and vacancy loss on behalf of families that entered into a

lease after that date. However, a family under a new lease and HAP contract may have an outstanding claim from a previous tenancy.

A family is obligated to pay money owed to the RAA as a condition of continued participation in the program. When an RAA has paid a vacancy loss, damage claim, or unpaid rent claim to a property owner the family must repay this money to the RAA. The family will be terminated from the program if they do not:

- repay the full amount owed; or,
- enter into a repayment agreement; and,
- abide by the terms of the repayment agreement.

To implement this policy the RAA must review all existing claims at reexamination. If necessary, the repayment schedule will be restructured and the family and the RAA will enter into a new agreement. The amount to be repaid each month must be reasonable and achievable by the family. For each missed payment, the RAA will send a letter notifying the family that the payment is overdue, and of the consequences of failing to make the payment. After three consecutive missed payments, the family may be terminated from the program.

An RAA may refuse to allow a family to move if they are in arrears. If the family has a history of damage or vacancy claims, or if the family had previously signed a repayment agreement but failed to make payments or stopped making payments, the RAA may:

- require the family to repay the full amount prior to moving; or
- require the family to come current on the agreement and sign a new agreement that permits termination in place after three consecutive missed payments.

11.1.3 Termination for drug or alcohol abuse

In accordance with the Housing Opportunity Extension Act of 1996, an RAA may terminate the Section 8 assistance of any person if the RAA determines that the person's abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. The RAA may also terminate the Section 8 assistance of any person who the HA determines is illegally using a controlled substance.

11.2 Termination Notice to Family

Notice to the family must be sent by certified mail return receipt requested and by regular mail. In instances where the certified mail is not accepted by the family and returned to the RAA, but the regular mail is not returned to the RAA by the Post Office, allegations by the tenant that they did not receive the notice of termination will not be considered by the RAA as a reason for failure to submit a request for an informal hearing or otherwise respond to the notice. Unless both are returned to the RAA, there is the presumption that the notice has been received. Assistance payments must continue to be made until the hearing process has been concluded at the RAA.

12. Drug-related and Violent Criminal Activity

Drug related criminal activity is:

1. the illegal manufacture, sale or distribution; or the possession with intent to manufacture, sell or distribute a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or
2. illegal use, or possession for personal use, of a controlled substance.

Violent criminal activity is any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

The term "criminal activity" includes both drug related and violent criminal activity. The term "drug related" will be used only if it is necessary to distinguish between the two.

12.1 Notification

Applicants and participants must be formally notified of DHCD's drug policy. At the time of application, families will be required to indicate on their application whether any family member has been involved in any drug related or violent criminal activity. The application will also provide the family with information concerning the DHCD drug policy.

12.2 Grounds for Denial or Termination of Assistance

The RAA will deny assistance to an applicant or terminate assistance to a participant family if any member of the family commits:

- drug related criminal activity; or
- violent criminal activity.

(See also sections 3.4.1 and 11.1)

To deny or terminate assistance for illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date the RAA provides the notice of denial or termination of assistance for this reason.

The RAA may not terminate assistance for past use of drugs by a rehabilitated user who has not used drugs in the last year.

The RAA may deny assistance for an addict who currently uses or possesses drugs.

The RAA may not deny assistance for an addict who is recovering, or has recovered from an addiction. The RAA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition of being allowed to reside in the unit.

There is no time limit on denial or termination of assistance for violent criminal activity.

Convictions and Evictions for Drug-Related and Violent Criminal Activities
An RAA must deny or terminate assistance if the RAA obtains information that an applicant has been convicted or evicted for a drug related activity or a violent criminal activity; or, a participant is convicted or evicted for a drug related activity or a violent criminal activity. Proof of conviction or eviction is evidenced by written documentation from a court of law, district attorney's office, or other agencies or sources that have legitimate access to this information.

Preponderance of Evidence

HUD regulations do not require that the RAA establish beyond a doubt the guilt of an applicant or participant prior to taking steps to deny or terminate assistance. The RAA may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in criminal activity, regardless of whether the family member has been arrested or convicted (on or off the site).

Each RAA may determine, on a case-by-case basis, whether to deny or terminate assistance when there is no conviction or eviction for drug related or violent criminal activity. If the agency can obtain written documentation that a preponderance of evidence exists that a family member(s) is involved in criminal activity the RAA may deny or terminate assistance. Written documentation may include but is not limited to police reports, arrests/disturbance reports, neighborhood complaints that indicate that a Section 8 tenant is trafficking a controlled substance from his unit, etc.

12.2.1 Limitation on RAA Authority

The RAA's authority to deny or terminate assistance is limited to criminal activity by family members.

An owner may evict the assisted family for criminal activity on or near the premises by any member of the "household" or a guest or another person under the tenant's control. To the extent that the criminal activity is a serious or repeated violation of the assisted lease the RAA may terminate assistance.

12.3 RAA Response to Alleged Criminal Activity

All RAAs must respond to drug and criminal activity information in a uniform and objective manner and except where a preponderance of evidence suggests otherwise, give the family the benefit of the doubt, particularly when a conviction or eviction has not been obtained.

No one individual at the RAA may have sole discretion to initiate denial or termination proceedings. DHCD recommends a two-tiered approach that requires the review and concurrence of a number of personnel before any notification steps are taken.

Each RAA will designate a staff person(s) in a supervisory capacity as the Information Reporting Manager (IRM). Program staff will report alleged drug related and/or violent criminal activity of

applicants or participants to the IRM. The IRM will determine if the information presented is relevant to the applicant's eligibility or program participant's ongoing assistance based upon DHCD's drug policy and HUD regulations.

The IRM will review the information and either make a recommendation to deny or terminate, or determine that the information is insufficient to make such recommendation. The IRM will issue a written recommendation to the appropriate program representative that gives specific reasons for the decision and identifying whether it is based on a conviction and/or eviction, or on a preponderance of evidence. The program representative is responsible for informing the family of its denial or termination of assistance in writing, citing the reasons cited by the IRM as the cause and informing the family of their right to appeal the decision.

The IRM will also provide training & guidance to staff on how to obtain documentation from the police, the courts, and district attorney offices to substantiate allegations of family involvement in illegal activities.

12.4 RAA Policy and Procedure

Each RAA is responsible for developing its own written administrative policy that operationalizes this policy. The policy must address all of the following points:

1. What action the RAA will take when information is obtained from anonymous tips, landlord and/or neighborhood complaints, housing inspectors' reports, local official complaints, newspaper reports, etc.

2. How the RAA will appropriately intervene when it obtains information about a family's drug or criminal activity. For example, a warning may be appropriate when an anonymous tip has been received versus a notice to terminate for a documented conviction.

3. Designate staff to coordinate RAA efforts to respond to, investigate, and obtain documentation pertaining to a family's involvement in drug related or violent criminal activity.

4. Develop and maintain a list to identify and track families the RAA denies or terminates due to drug related and/or violent criminal activity. Limit access to the list to specific staff.

5. Ensure that privacy rights are not violated.

13. Reasonable Accommodation & Mitigating Circumstance

Reasonable accommodation is intended to provide persons with disabilities equal opportunity to participate in the Section 8 housing program through the modification of policies and procedures.

Mitigating circumstances are verifiable facts that overcome or outweigh negative information.

13.1 Reasonable Accommodation

A reasonable accommodation is made in response to individual requests from a qualified person with disabilities. In general, the person with disabilities will suggest an accommodation that he believes to be effective, and the RAA will determine whether the requested accommodation is reasonable from it's viewpoint. The RAA may also suggest other accommodations that are less burdensome to the RAA.

13.1.1 Authority

Neither DHCD nor its RAAs have the authority to waive federal regulations in response to a request for a reasonable accommodation. A request for reasonable accommodation that can not be granted by the RAA will be forwarded to HUD. All requests must be accompanied by appropriate verification as required by the RAA or DHCD, and by HUD.

Exceptions to FMRs may be granted by the RAA for up to 10% to assist participants with disabilities in locating and renting accessible units. However, such rents must meet rent reasonableness standards for comparable units.

Exceptions to FMRs may be granted by HUD for up to 20% to assist participants with disabilities in locating and renting accessible units. However, such rents must meet rent reasonableness standards for comparable units.

13.1.2 Obligation

The RAA's obligation is to make an accommodation which is effective; i.e., one which overcomes barriers to equal access and facilitates the use of the housing program, provided that the accommodation also is reasonable; i.e., does not cause an undue burden or cause a fundamental alteration in the nature of the housing program.

A reasonable accommodation is unique to the needs of the person as a result of his disability; therefore, each requires an individualized assessment. Requests for reasonable accommodation must be considered by the RAA on a case-by-case basis.

Generally, the RAA's obligation to consider, and where reasonable, grant accommodations to a participant with disabilities ends when program participation actually terminates.

Each RAA must have written procedures for processing and evaluating reasonable accommodation requests.

Information on the availability of the RAA's reasonable accommodation procedure will be posted in the RAA office and will be provided at application intake, with notices of rejection, program violation or termination, and at other times as the RAA deems appropriate.

Reasonable accommodation decisions will be made by the RAA in a timely manner; and, will be documented in writing, and if applicable, in another format accessible to the requester. An agreement to make accommodations will include terms, conditions, performance expectations for all parties, and, if appropriate a schedule.

13.1.3 Reinstatement & Provisions for Resumption of Assistance

If a participant who has not been informed of the RAA's reasonable accommodation policy has been terminated from the program or left the program for reasons related to a recognized disability after the effective date of this plan, they may be reinstated under the following circumstances:

- if not more than one year has passed from the effective date of their termination; and
- if they are able to provide verification of their ability to comply with the essential program requirement(s) which was the cause for their termination; and,
- the RAA has a subsidy available to issue.

It must be established by the family that the previous unacceptable behavior (which must be defined specifically) did, in fact, occur because of the disability, and that in the future, the family could reasonably be expected to be program compliant because of a change in circumstances.

If part of the poor tenant history of an applicant, or former participant with disabilities relates to failure to comply with treatment, the RAA may properly inquire about the reasonable expectation that the applicant will comply with current treatment.

For example, it may be an appropriate accommodation to delay or cancel a termination proceeding. If a reasonable accommodation request is pending, the program termination could be stayed until a decision was made. If the program violation is subject to cure, the participant cures the violation, and a reasonable accommodation makes certain that the violation will not be repeated, the program termination could be canceled. The simple provision of "a second chance" in the absence of any action to cure the violation or prevent a recurrence, is not likely to be an appropriate accommodation.

If an applicant or former participant is being (re)admitted by virtue of such a reasonable accommodation, the RAA may not make continued receipt of the assistance a requirement of continued program participation. Once an applicant is (re)admitted, the standard for remaining in occupancy is program compliance.

For example: A relative arranges for a disabled family terminated due to poor housekeeping (to the extent that it created a serious and repeated lease violation) to receive weekly housekeeping services. The RAA determines that this is a reasonable accommodation and reinstates the family. The RAA may not make continued receipt of the housekeeping services a requirement of continued program participation. If the housekeeping services should stop after six months, the RAA may not terminate the family from the program provided they are able to maintain their tenancy and comply with all program requirements.

If a participant asserts that his failure to comply with the essential program obligations is a result of their disability, it is up to the participant to propose a reasonable accommodation, which if implemented, would result in compliance with essential program provisions. The RAA may require verification of the proposed accommodation that would allow them to comply with essential program requirements. However, the RAA can not require such actions as a condition of initial or continued program participation.

The RAA may require the former participant to verify that:

- they had or have a disability;
- the former problems were caused by the disability; and,
- that present treatment, or reasonable accommodation, can reasonably be expected to prevent recurrence of the problem.

A simple example of a reasonable accommodation to ensure program compliance is that a copy of all RAA notices to be sent to the family will also be sent to a responsible third-party designated by the family.

The RAA may automatically reinstate applicants with disabilities who fail to respond within the reasonable time frame to inquiries to update the waiting list, but only for reasons that are related to their disability.

13.2 Mitigating Circumstances

Mitigating circumstances are verifiable facts that overcome or outweigh negative information. Mitigating circumstances can apply to all families, they are not exclusive to families with disabilities.

Considering mitigating circumstances for a family with disabilities is a reasonable accommodation, and thus a requirement.

13.2.1 Effect on Denial or Termination of Assistance

An RAA has discretion to consider mitigating factors presented by the family when deciding whether or not to deny or terminate assistance. Should the RAA decide not to deny or terminate a family's assistance due to mitigating circumstances, the RAA must document this fact in the family's file and attach any documentation to support this decision.

It is not the RAA's responsibility to inquire as to whether there were mitigating circumstances. However, if the family claims mitigating circumstances it is up to the RAA to determine whether it believes the circumstances are valid. The family must provide documentation that establishes the validity of the claim. The RAA is the final judge of what constitutes adequate and credible documentation.

Mitigating factors can be, but are not limited to, considering the seriousness of an offense, the extent of participation by other family members, and the effect that the denial or termination may have on the household. The RAA has discretion to determine an appropriate remedy, and may permit the remaining members of a household to continue to receive assistance and may impose a condition that the offending household member(s) will not reside in the unit. A signed statement to that effect can be required by the RAA. In accordance with the Housing Opportunity Program Extension Act of 1996, an RAA may require that the family member(s) involved in the illegal use of a controlled substance or abuse of alcohol submit evidence of: 1)successful completion of a supervised drug or alcohol rehabilitation program; 2) successful rehabilitation by other means; or, 3) current participation in a supervised drug or alcohol rehabilitation program, as a condition of being allowed to begin or continue participation in the Section 8 program.

Mitigating circumstances may exist such that the RAA believes that granting assistance to an applicant is warranted even though the applicant meets one of the criteria for denying assistance. For example, in the case of criminal activity, where the family member that caused the problem is no longer part of the household.

In cases where a family was evicted or had their assistance terminated by another administering agency, the RAA must do its own investigation into the cause, how long ago it occurred, and whether the family composition is the same before determining whether to deny or terminate assistance to that family. For example, it may not be appropriate to deny assistance to a family that was evicted from public housing for damage to the unit where the damage was done by a family member who no longer resides with the household.

There are limited instances in which a family owes money and the RAA may exercise discretion when determining eligibility. For instance, if a family owes a small amount to another HA and that HA is refusing to execute a repayment agreement despite good faith efforts by the family to do so, the family could be determined to be eligible.

The RAA may automatically reinstate applicants on the waiting list if the agency reasonably believes that extenuating circumstances interfered with the ability of the applicant to keep his or her waiting list information current.

DHCD requires that families give the RAA at least a calendar month written notice before moving to a new unit. This requirement may be waived in certain instances, if it is determined that the family was unable to provide the proper notice due to factors beyond its control, such as cases of domestic abuse, and some evictions.

13.2.2 Domestic Violence as a Mitigating Circumstance

There is no question that domestic violence can be a mitigating factor in a family's failure to comply with any program requirement. If the claim of domestic violence is sufficiently documented then the RAA must weigh all the circumstances of the case and determine whether the mitigating facts outweigh the family's failure to comply with program requirements.

14. Encouraging participation by owners of suitable units located outside areas of low income or minority concentration.*

Periodically, RAA's will perform outreach to encourage owner participation by hosting regional conferences and training programs with local rental housing associations, Boards of Realtors, local owners, and other civic, charitable and neighborhood organizations that may have an interest in providing housing for low income families. Typically, the RAA will make a presentation on the various subsidy programs. Program benefits and requirements will be explained and participants will have an opportunity to ask questions. RAA staff should be available for presentations to local rental housing associations, community groups, Realtors, and other interested groups upon request.

Each RAA covers urban, suburban, and/or rural communities and outreach activity extends throughout their jurisdiction.

RAAs are required to develop and publish their own materials for owners describing the Section 8 program requirements and benefits. At any time, information packets for new, current, and prospective landlords are available upon request from each RAA.

Each RAA must develop a specific, localized plan for outreach to owners and be able to document all outreach efforts.

15. Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit*

The RAA must suitably communicate the provisions of both Federal and State Fair Housing laws to applicants, participants, and owners. RAA staff is required to attend fair housing training sponsored by DHCD and the Massachusetts Commission Against Discrimination (MCAD) when scheduled by DHCD.

Fair housing laws are explained to applicants at the briefing session. A Summary of Federal and State fair housing laws, and a copy of the HUD brochure, "Fair Housing -- Its Your Right" that contains housing discrimination complaint Form HUD-903 and/or 903A (Spanish version) are in the information packet given to the family at the briefing. These documents are also available upon request.

Strategies to deal with owners who are unfamiliar with fair housing laws are also presented at the briefing. Particular attention is given to explaining the provisions of the Massachusetts Fair Housing Act applicable to families with children, focusing on issues surrounding lead-based paint. Also the RAA will provide guidance on the more common issues that may constitute discrimination. These may include issues surrounding lead-based paint; an owner's reluctance to accept a Section 8 subsidy; or bedroom size issues that are in conflict with the RAA subsidy standards and HQS.

If a family is having difficulty leasing a unit RAAs should proactively attempt to spot issues that may be discriminatory. The suggestion that a family document their housing search efforts beyond the first 60 days can be a useful tool in spotting possible discrimination.

If a family claims discrimination because of race, color, religion, sex, national origin, age, familial status or disability, the RAA will advise the family of its options and explain how to complete a discrimination complaint to be filed with MCAD. If requested by the family the RAA will assist in completing the complaint form. The staff person completing the complaint form will make no judgment about the legitimacy of a complaint; they are there to help the tenant complete the necessary forms.

Exceptions to FMRs may be granted by HUD for up to 20% to assist participants in leasing units outside areas of low income or minority concentrations. However, such rents must meet rent reasonableness standards for comparable units.

16. Inspection Requirements

These DHCD inspection requirements are supplemental to HUD's Housing Quality Standards for the Certificate, Voucher and Moderate Rehabilitation Programs.

As described in HUD's Housing Inspection Manual,

> "The HUD Housing Quality Standards are a basic 'floor' or minimum standard that applies across the country to units on The Section 8 Existing Housing Program. In areas with relatively higher quality housing available, PHAs will be able to adopt a higher standard".

DHCD utilizes both HUD's Housing Quality Standards as well as the following DHCD Inspection Requirements as a basis for evaluating a unit each time it is inspected.

The Commonwealth of Massachusetts has a State Sanitary and Building Code (105 CMR 400.00 - 419.00 and 780 CMR, hereinafter referred to as the Codes) which regulate all housing in the Commonwealth. In some instances the Codes supersede and are more comprehensive than HUD's Housing Quality Standards and DHCD's Inspection Requirements. State law stipulates that all property owners are expected to maintain their dwelling units in conformance with the Codes and to correct all Code violations in a timely manner. Although DHCD's Regional Administering Agency (RAA) inspectors will not specifically check for violations of the State Sanitary and Building Codes (DHCD is not the appropriate enforcement agency for this responsibility), DHCD performs periodic Code trainings for its RAA inspectors to supplement the training which DHCD provides on HQS and DHCD's additional standards.

The following statement must be included with all Inspection Reports (Attachment 16-A):

"This inspection has been performed to determine compliance under the HUD\DHCD Section 8 Program. While some of the inspection requirements may be similar or identical to provisions of local Codes, this inspection does not certify compliance with said Codes. In all instances, it is the owner's responsibility to maintain property to meet all applicable state and local Codes and a tenant's right to request an inspection by the local Code Enforcement Agency."

Known violations and continued non-conformance with the Codes will be a factor in the RAA's determination of rent reasonableness, the provision of an annual adjustment factor at reexamination time and the scheduling of more frequent reinspections, consistent with DHCD's Marginal Unit Policy as outlined in Section 16.13.

Non-compliance with the HUD Housing Quality Standards and/or the DHCD Inspection Requirements and/or repeated and regular non-compliance in accordance with the Marginal Unit Policy is grounds for:

- rejecting the unit at initial inspection for the Program
- suspending subsidy

- terminating the HAP contract with the owner
- termination of tenant participation in the program

DHCD Inspection Requirements

In that these DHCD Inspection Requirements are supplemental to the HUD Inspection Requirements, please note that the numbering system used for the DHCD Inspection Requirements is designed to conform as closely as possible to the numbering system used in HUD's Housing Inspection Manual and the DHCD Standard Inspection Form. The DHCD Standard Inspection checklist (Attachment 16-A) has been revised to specifically reflect many of the new inspection requirements.

16.1 For All Habitable Rooms

Living Room, Kitchen, Bathroom, All Other Rooms Used for Living or Sleeping and Interior Halls

16.1.1 Room Present (1-4.1)

16.1.2 Ceiling Height

Ceiling heights in all habitable rooms must not be hazardous for their use.

Is the ceiling height of any part of any habitable room less than 5' high? If so, such area of 5' or less ceiling height shall not be considered in computing the total floor area of either the room or the dwelling unit.

16.1.3 Below Grade Space

Is any part of the dwelling unit below the average grade of the adjoining ground?

If so, no room or area in a dwelling may be used for living if such room or area has more than half its floor to ceiling height below the average grade of the adjoining ground and such room or area is subject to chronic dampness.

16.1.4 Screens (1-4.5)

Upon initial inspection, is there at least one screen in the living room? A screen door will meet this requirement.

Screens may be either permanently installed or expandable. The inspector shall make sure this requirement is met regardless of the time of year the inspection occurs. The inspector shall insure that screens are in the unit or otherwise available, and that the number of screens is appropriate to meet this requirement. During the time between October 31st and March 31st an extension of time to comply may be given to the owner.

16.2 Kitchen

16.2.1 Electricity (2.2)

There must be at least **two** working electrical outlets in the kitchen.

16.2.2 Electrical Hazards (2.3)

Any outlet located within 12" of a water source must be connected to a GFI (Ground Fault Interrupter).

16.2.3 Floor Condition (2.8)

Is the floor surface covered by a smooth, non-corrosive, non-absorbent and waterproof material?

Resilient sheet flooring, resilient tile and ceramic tile are acceptable materials. Flooring should be well-adhered to the substrate and all seams in sheet material should be sealed.

Wood flooring is acceptable only if it has a durable and water-resistant finish with no cracks large enough to allow the accumulation of dirt, food or the harborage of insects.

16.2.4 Stove or Range With Oven (2.10)

16.2.4.1 Substituting a microwave for an oven, stove or range

A microwave oven may be substituted for a stove. If the microwave is owner supplied, the owner must offer the same option to all other tenants in the building. The Inspection Form-Addendum for a Microwave (Attachment 16-B) must be completed.

16.2.5 Space For Storage and Preparation of Food (2.13)

The space for storage and surface for preparation of food must be in good condition and impervious to water damage. Cabinets which are not securely attached to the wall will fail inspection. Pantry closets, shelves, counter tops and under sink storage areas must be free from defects which make them difficult to keep clean or encourage infestation.

16.2.6 Optional Equipment (2.14)

Owner installed optional equipment usually adds to the value of the unit and is a consideration in determination of rent reasonableness. The working condition of owner installed optional equipment must be noted on the initial inspection report. Thereafter, the owner is responsible to maintain all optional equipment in working condition. However, if upon annual inspection, optional equipment fails due to the tenants' misuse, it will not fail inspection or be cause for tenant termination, but should be noted as a recommended repair.

Owner installed optional equipment may include but is not limited to dishwasher, laundry facilities, air conditioner, garbage disposal, microwave, and range hood.

16.2.6.1 Range Hood

A range hood ventilation fan must be covered by a filter or other protective covering in order to prevent injury from exposed fan blades. The filter should be checked for excessive grease build-up which may be a fire hazard.

16.3 Bathroom

16.3.1 Electrical Hazards (3.3)

Any outlet located with 12" of a water source must be connected to a GFI (Ground Fault Interrupter).

16.3.2 Wall Condition (3.7)

Walls around the tub area must be covered by a smooth, non-corrosive, non-absorbent and water proof material up to a height of 48". Where there is an installed showerhead or shower compartment, the walls must be covered up to height of 6'. A circular shower curtain rod which encloses the tub is acceptable.

16.3.3 Floor Condition (3.8)

The floor surface of every room containing a toilet, shower or bathtub must be covered by a smooth, non-corrosive, non-absorbent and waterproof material.

Resilient sheet flooring, resilient tile and ceramic tile are acceptable materials. Flooring should be well-adhered to the substrate and all seams in sheet material should be sealed .

Wood flooring is acceptable only if it has a durable and water resistant finish with no cracks large enough to allow the accumulation of dirt, food or the harborage of insects.

16.3.4 Ventilation (3.13)

16.3.4.1 Dampness

Does the bathroom have chronic dampness as evidenced by regular and/or periodic appearance of moisture, water, mold, mildew or fungi?

If plumbing and ventilation are in good repair and properly used, there should not be chronic dampness. If chronic dampness, mold, mildew, or fungi is present, it may require special cleaning and treatment with mildewcide and paint or replacement.

16.3.5 Space for Storage and Optional Equipment (3.14)

The space for storage in the bathroom must be in good condition and impervious to water damage. Cabinets which are not securely attached to the wall will fail inspection. Shelves, counter tops and under sink storage areas must be free from defects which make them difficult to keep clean or encourage infestation.

Owner installed optional equipment may include but is not limited to medicine cabinet, towel bars, soap dish and other accessories.

16.4 Other Rooms Used For Living

16.4.1 Space and Use - Square Footage (4.1a)

Every room which may be used for sleeping must contain at least 70 sq. feet for one occupant, or at least 50 sq. feet per person for two occupants.

If there are more than two persons per sleeping area, agency staff must obtain Program Director permission to exceed unit size criteria established in the RAA's Administrative Plan.

16.4.2 Security (4.4)

16.4.2.1 Bedroom and Other Interior Door Locks:

All egress and interior room doors shall be readily openable from the side from which egress is to be made without the use of a key or special knowledge. This means that padlocks, slidebolts, and hook and eye locks are not allowed on the outside of bedroom or other interior room doors.

Doors may be equipped with a night latch, hook and eye, slide bolt or security chain provided such devices are openable from the inside without the use of a key or tool and mounted at a reasonable height for the occupant. Furthermore, no room which contains the unit entry or exit door may be lockable.

16.4.3 Natural Light Requirement (4.9)

All bedrooms or any other rooms used for sleeping must have at least one openable window.

Acceptable under certain conditions are windows in rooms used for sleeping which open onto common areas rather than to the outside. These are acceptable provided the windows allow adequate natural light to permit normal indoor activities. For example: a bedroom window which faces onto a common area with a large vaulted glass ceiling, or which faces onto an enclosed sunporch may pass. The emphasis of this requirement is to provide adequate natural light in the bedroom.

16.5 All Secondary Rooms Not Used For Living

16.5.1 Garage- Room Code 7

If the garage door opens directly into the unit, it must be a solid core wood or metal door. A hollow wood or plastic "panel style" door is not acceptable.

A door from a garage cannot enter directly into a sleeping room.

16.5.2 Laundry- Room Code 8

A gas dryer must be vented to the outdoors, shaft or crawlspace. An electric dryer is not required to be vented to the outdoors, however it should be properly vented to trap lint and prevent excessive mildew problems. Check behind the dryer whenever possible for excessive lint and dust build-up which could be a fire hazard.

Washing machine drain standpipes must be capped if not in use for an extended period of time. Although a trap is usually present, if not used for an extended period of time the water in the trap will eventually evaporate, which may allow the escape of sewer gases.

16.6 Building Exterior

16.6.1 Condition of Stairs, Rails and Porches (6.2)

16.6.1.1 Protective Railings

There must be a wall or protective railing at least 36" high around every porch, balcony, loft or roof which is more than 30" from the ground and intended for use by the occupant.

In order to pass inspection a handrail must be graspable. This means that a wall cap which exceeds approximately 2-5/8 inches wide will not serve as a handrail.

A railing or other protective structure shall be required when retaining walls with a difference in grade level in excess of 4 feet are located within 2 feet of a walk, path, parking lot or driveway.

The top step or landing shall be counted as a step when determining if a handrail is required. Counting 4 or more risers will always assure this requirement is met. (Attachment 16-C)

A basement bulkhead requires a handrail if used by the tenant on a regular basis.

16.6.1.2 Foundations - Porch, Deck, Stairway

Are porches, decks and stairways structurally sound? Does every porch or exterior stair have an adequate foundation?

A concrete foundation will usually be visible above grade. There should be connecting hardware between the supporting wood member and the foundation. This may be angle iron or metal brackets bolted from the bottom of the wood support to the foundation.

Wood post sitting on pavement, concrete block, ground or asphalt without a foundation is not acceptable. (Attachment 16-D)

The following Building Code guidelines shall be observed in determination of the structural soundness of all porches, decks and stairways:

- Generally, joist spacings for porches and decks should be 12-24 inches.
- All porches, decks, stairs and railings should be adequate to support a 200 lb. load; consider the ability to support a refrigerator.
- 8 1/4" is the maximum riser height, with no more than 1/4" difference between each riser. Further, 9" is the minimum tread width. Stairways which do not conform with these requirements may present a tripping hazard.
- No more than 15 treads between landings on a stairway are generally acceptable for adequate structural support and fire exit safety.
- Support stringers must be adequate to support stair treads. Generally, 2" x 12" stringers are acceptable.

16.6.1.3 Balusters on Decks, Porches and Lofts, and Decks, over 30" from the Ground

All decks, porches and lofts must have balusters spaced at no more than 6" intervals (that is, so a six-inch sphere cannot pass through the opening) in all units occupied by children under six years of age.

16.6.2 Condition of Exterior Surfaces (6.4)

16.6.2.1 Excessive chipping and peeling paint

Regardless of the family composition, whenever excessive chipping and peeling paint, or areas of missing siding allow weather to damage the framing or sheathing or allow wind, water or moisture to penetrate the walls, the inspection will fail.

16.6.2.2 Seasonal Repairs

Sometimes there a seasonal consideration which makes treatment of exterior chipping and peeling paint difficult to implement.

During winter months HUD Regulations **require** that exterior chipping and peeling paint be treated whenever there is a child under 6 years of age residing in the unit, **regardless of the time of the year.** However, DHCD acknowledges that this requirement can be difficult to implement. For example, the owner of the property does not want to treat the paint until spring (to preserve the exterior wood), and the children who occupy the unit are infants, and could not possibly crawl or walk outside during the winter months **(this does not mean toddlers)**. In an instance such as this, where strict implementation would cause a household to lose an otherwise decent, safe and sanitary unit, DHCD strongly encourages RAA staff to exercise good judgment and to weigh the interests of the household against the seasonal requirement. **This exception does not apply if the paint is lead.**

16.7 Heating and Plumbing

16.7.1 Adequacy of Heating (7.1)

16.7.1.1 Unit Temperature Requirement

The air temperature in the unit should be no higher than 78 degrees F. or lower than 64 degrees F from September 15th to June 15th inclusive.

In cases of tenant complaint it may be necessary to check actual room temperature. Room temperature can be read at a height of 5' above floor level on a wall any point more than 5' from an exterior wall.

16.7.2 Safety of Heating Equipment (7.2)

16.7.2.1 Prohibited and Unsafe Heating Equipment and Conditions

Is the unit free from prohibited and unsafe heating equipment?

Gas space-heaters are never allowed in a room used for sleeping or a bathroom, unless they are direct vented appliances which draw intake air from outside of the unit.

The following types of heaters are considered unsafe:

- all unvented heaters
- all portable space heaters
- parlor heaters
- cabinet heaters
- any room heater where the fuel tank is located less than 42" from the burner
- floor furnaces also known as joist heaters

Also considered unsafe:

- kerosene
- range oil
- #1 fuel oil
- any portable wick-type heater

16.7.2.2 Floor Furnaces

On a case-by-case basis, DHCD will review waiver requests to accept a floor furnace on the Section 8 Program. The Waiver Request Form (Attachment 16-E) must be completed as outlined in Section 16.16.

The following information must accompany the Waiver Request:

- Name of manufacturer
- Model number
- Date of Manufacture
- Documentation from a licensed heating/plumbing inspector or the local utility company regarding the safety and operating condition of the floor furnace

All owners and tenants leasing a unit with a floor furnace must be notified of the following in writing:
(Attachment 16-F)

Floor furnace manufacturers include the following information in the printed instructions shipped with each appliance:

> **IMPORTANT**
>
> The warm air floor register of a floor furnace, due to the high discharge air temperatures and radiation from heating surfaces, attains temperature sufficiently high to cause severe burns. LOCATION: Install in location having least occupant traffic. Register must not be closer than 6" to adjacent walls. Two adjoining sides must be at least 15" from walls to eliminate the necessity of occupants walking over hot register. For proper operation, unit must be kept clean. At regular intervals turn manual valve to off, let cool, remove register and clean dust and foreign material from jacket with vacuum cleaner.
>
> **CAUTION**
>
> Register **hot** when operating. Can cause burns. Keep children off. Provide fence or register guard for their protection. Do not store flammables on or near floor register.

16.7.2.3 Fireplaces, Wood and Coal Burning Stoves

At initial inspection, if the unit is equipped with a working fireplace, a wood or coal burning stove, the owner must document inspection by a qualified professional, with cleaning if necessary. If the tenant uses the fireplace, wood or coal burning stove regularly during the heating season, inspection and/or cleaning is required once every two years at annual inspection.

16.7.2.4 Oil Supply Lines

All oil supply lines which may be subject to damage and in direct contact with the earth or concrete shall be covered with protective concrete or enclosed in a continuous protective sleeve. Plastic (PVC) tubing shall be one method of enclosing the oil line.

16.7.2.5 Certification

Upon initial lease up, owners must be notified that documentation from a licensed heating/plumbing contractor, the local utility company or local code inspector regarding the safety and good operating condition of the heating system is required. At lease up, if an owner can submit heat certification no more than 2 years old, this is acceptable. However, if the heat certification is not available, the owner must submit documentation no later than the next annual inspection. Failure to provide heat certification may result in rent withholding and/or contract termination. The Inconclusive Checklist (Attachment 16-G) may be used to assure follow up.

Certification applies to all gas and oil fired heating systems, gas space heaters, gas-on-gas stoves, dual vent wall heaters, fireplaces, and wood and coal burning stoves. Certification must indicate that the heating unit has been inspected or cleaned and service by a qualified professional such as a licensed heating/plumbing contractor, the local utility company or code inspector.

16.7.3 Ventilation and Adequacy of Cooling (7.3)

16.7.3.1 Dampness

Does any habitable room have chronic dampness as evidenced by regular and/or periodic appearance of moisture, mold, mildew or fungi?

If plumbing and ventilation are in good repair and properly used, there should not be chronic dampness. If chronic dampness, mold, mildew or fungi, it may require special cleaning and treatment with mildewcide and paint or replacement.

16.7.4 Water Heater (7.4)

16.7.4.1 Hot Water Temperature

Hot water temperature supplied to all faucets should be between 110 degrees F. and 130 degrees F.

If water is too hot or too cold, check proper operation of hot water heater and general condition of hot water heater and its piping. In cases of tenant complaint it may be necessary to check actual water temperature.

16.7.4.2 Gas Fueled Hot Water Heaters

No gas-fueled hot water heater may be located in a room used for sleeping or a bathroom, unless they are direct vented appliances and draw intake air from outside of the unit.

16.7.5 Approvable Water Supply (7.5)

16.7.5.1 Water Pressure

Water pressure supplied to all faucets should be sufficient to meet the ordinary needs of the occupants.

16.8 General Health and Safety

16.8.1 Access to Unit (8.1)

16.8.1.1 Security

According to the building location, common practice, and at the discretion of the RAA based on knowledge of the neighborhood, every entry door to a building which provides direct access to the outside shall be fitted with a working keyed lockset.

All egress doors must be easily openable from the inside without the use of a key, special knowledge or effort.

A chain lock, slide bolt or hook and eye lock is not adequate as the only lock for any unit entry doors.

If the unit provides direct access to a common basement, be sure the unit door is lockable and provides security for the tenant.

Replacing a loose or ill-fitting lock or striker plate may require providing new, solid, wood blocking at the door frame or at the door itself in order to install the lockset securely.

16.8.1.2 Accessibility

Are all areas of the building accessible to allow the inspector to inspect all critical areas in order to assure compliance with all HQS and DHCD Inspection Requirements?

Occasionally, certain areas of a building are not readily available for inspection. Most common are locked basements and utility rooms of large buildings. While the owner is within his/her rights to deny tenants access to certain spaces, it is imperative that the inspectors are allowed to inspect all of the building. An owner's refusal to grant access to a space is grounds for denying or withholding subsidy to the owner.

16.8.2 Evidence of Infestation (8.3)

If infestation is chronic, owner must provide documentation to verify professional extermination.

16.8.3 Garbage and Debris (8.4)

The owner is ultimately responsible for the final collection, disposal or incineration of all garbage and debris.

The owner is required to provide trash receptacles (barrels or bins with tight fitting covers, dumpsters, etc.) adequate in capacity and safety to temporarily contain the trash for all units between periodic contracted or municipal pick-ups.

The owner must make every attempt to locate receptacles so that no objectionable odors enter the dwelling unit.

The occupant is responsible for placing garbage and debris in designated receptacles or other point of collection. The occupant's failure to do so will constitute a fail rating.

The occupant is responsible to maintain the unit free of garbage, debris, filth or cause of sickness. The occupant's failure to do so will constitute a fail rating.

16.8.4 Interior Stairs and Common Hallways (8.6)

16.8.4.1 Common Area Lighting

The owner must provide operating light bulbs in all required light fixtures in all interior and exterior common areas of the building.

16.8.5 Other Interior Hazards (8.7)

16.8.5.1 Any Other Optional Equipment

Owner installed optional equipment usually adds to the value of the unit and is a consideration in the determination of rent reasonableness. The working condition of owner installed optional equipment must be noted on the initial inspection report. Thereafter, the owner is responsible to maintain in working condition.

Owner installed optional equipment may include, but is not limited to doorbells and buzzer system, air conditioner, dishwasher, garbage disposal, laundry facilities, etc.

16.8.5.2 Circuit Panel Box

There must be no open spaces or missing circuits in the electrical panel box, recommend blank spaces be covered with inserts to prevent accidental shock.

16.8.5.3 Storage of Flammables

Items such as propane gas tanks for grills or other utilities, lawn mowers, motorcycles, snowblowers, or any other gas powered engines, gasoline and kerosene cans and containers cannot be stored inside the unit, the basement, or an interior common area.

There is no safe way for an inspector to verify that containers are "empty". Fumes can present a serious hazard. All it takes is a static spark with the duration of a thousandth of a second to contact a few molecules of a vapor/air mixture to raise the temperature above the ignition point. It must be understood that even an extremely small area and short duration of temperature contact is sufficient to ignite a flammable vapor.

The above items may be stored anywhere outside. On or under a porch and next to the building will pass as there is plenty of ventilation.

The following two exceptions to the outdoor only rule can be submitted for DHCD approval on a case by case basis:

- If the owner can provide written approval for storage from the Local Fire Department.
- If the storage area is a separate area only accessible through an exterior entrance
- If the area is enclosed with fireproof grade gypsum wall board and is ventilated.

16.8.6 Elevators (8.8)

Each RAA must adopt a follow-up procedure which ensures that all elevators receive a current inspection certificate prior to the next annual inspection. Subsequently, upon the next annual inspection, if the elevator has not been inspected in accordance with local requirements, the unit must receive a fail rating. Documentation from a qualified elevator maintenance company may also meet this requirement.

16.8.7 Site and Neighborhood Conditions (8.10)

If excessive (more than can be "cleaned by one person in an hour" p. 128 HQS manual) garbage, trash, debris, or other obvious hazard is located on adjacent property or a common area (not owned by the Section 8 owner) that provides access to the property being inspected the inspector must fail the unit when there are children under 6, handicapped/disabled or elderly family members residing in the unit.

Owners shall be notified of the following remedies:

- the owner may make the area clean or safe, or
- construct a fence that will separate the property in question, or
- notify, in writing, the local Board of Health of such problem and
- provide the RAA with copies of letters which demonstrate the attempt to report the condition to the owner of the adjacent property.

16.8.8 Lead Paint, Owner Certification (8.11)

Effective February 1, 1990 all inspections for new units (including Mod Rehab units), which will be occupied by a child under 6 years old **and** built prior to 1978, must include obtaining from the prospective property owner (or agent), a Letter of Compliance (LOC), a Letter of (Re)Occupancy (Re)Inspection Certification or a Letter of Interim Control, stating that the unit meets the requirements of the Massachusetts Lead Poisoning and Prevention Control Act, as amended.

Each RAA must implement a procedure to phase-in the implementation of this requirement for units already under lease. All units currently under lease must have compliance documentation no later than September 1, 1991. The Section 8 inspectors at RAAs do not perform lead inspections.

Buildings constructed after 1978 do not require certification regarding lead paint. The owner may be required to submit a copy of the original Building Permit in order to verify the age of the building.

During the interim of the lease, upon notification or knowledge of a new or additional child under 6 years old in the unit, the owner shall be given written notice allowing 90 days to submit an LOC. A 30 day extension may be granted if an owner demonstrates a good faith effort to comply.

DHCD strongly recommends that RAAs schedule new unit inspections which require an LOC only if the LOC accompanies the Request for Lease Approval. This way staff time will not be wasted inspecting a unit which will not pass this requirement. Furthermore, issues of which date to begin subsidizing the unit will not arise.

If the inspection is performed prior to submission of the LOC, the lease may begin as of the date the unit otherwise passes inspection, provided the tenant is in occupancy and the LOC is a Letter of Initial Compliance which indicates that the unit did not require any abatement of lead based paint.

16.8.8.1 When Was The LOC Issued?

Lead inspections performed between July, 1988 and July 1, 1990 Public must have been performed by an inspector registered with the Department of Public Health. Any lead inspection performed after July 1, 1990 must be performed by an inspector licensed by the Department of Public Health.

Any LOC issued prior to July, 1988 must be accompanied by written approval of "grandfather" status from the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP). In order to obtain "grandfather" status, owners may be advised to forward all lead related information to:

CLPPP 470 Atlantic Ave. 2nd floor Boston, MA 02110

16.8.8.2 Letters of (Re)occupancy and Letters of Interim Control

Although these are not Letters of Compliance, provided the unit passes all of HUD's HQS requirements, these documents are acceptable and a lease may begin. A Letter of (Re)Occupancy certifies that the interior of the unit is in compliance. According to Massachusetts law the tenant may take (or resume) occupancy once this certification has been issued by a licensed lead inspector. At this point, the owner is allowed no more than 90 days to provide a Letter of Compliance which confirms that all exterior work has been done.

A Letter of Interim Control certifies that there are no immediate lead hazards, such as chipping and peeling paint in the unit. According to Massachusetts law, the unit is considered safe for occupancy. A Letter of Interim Control is valid for one year, at which time the owner may renew for an additional year with the approval of a licensed lead inspector. After a maximum of two years from the date of issue, at which time, if the unit is still occupied by a child under 6, the owner must submit a Letter of Compliance. Each RAA is responsible for developing a tracking system for units under Interim Control.

16.8.8.3 Accept Original LOCs Whenever Possible

Accept only original LOCs (sample Attachment 16-H) as valid documentation whenever possible. A noted copy of the original is acceptable as well as temporarily accepting a facsimile copy contingent upon viewing the original in order to expedite a new lease or continue the HAP.

16.8.8.4 Conducting An Inspection

Prior to conducting an inspection, RAA inspectors should be apprised as to the presence of any children under 6 years of age in the unit. If this information is not provided to the inspector by staff, the inspector must ask the family at the time of the inspection and make note on the Inspection Checklist in the space provided.

The Inspection Checklist must include a section which indicates that the owner has complied with the requirement to provide proper lead related documentation. for example, an LOC or Letter of Interim Control must be indicated as "on file" or "not applicable".

Whenever an inspection fails for defective paint the inspection report shall indicate, "treat defective paint". Owners must not be instructed to "scrape" defective paint surfaces.

Effective October, 1996 HUD's HQS allows minimal amounts of defective paint to pass the inspection (Attachment 16-I) In order to fail inspection the paint must be loose and noticeably separating.

Although HUD's HQS no longer applies to fences, outbuilding, garages, and sheds DHCD requires that these surfaces be included in the inspection.

16.8.8.5 Conducting an Annual Inspection When an LOC is Already On File

During an annual inspection of a unit which already has compliance documentation on file, the unit must be inspected for defective paint. In accordance with CLPPP policy, under certain conditions, once the unit is in compliance with the Lead Law, the owner may, under certain circumstances, perform the work necessary in order to maintain compliance without employing a licensed deleader. In many cases, this will afford owners the convenience of correcting insignificant defects in the paint themselves. The owner is responsible to follow appropriate work practices and safety precautions and must be notified with the following attachments whenever a unit fails for defective paint:

1. HOMEOWNER SAFETY PRECAUTIONS WHEN MAINTAINING COMPLIANCE (Attachment 16-J) and

2. MASS. DEPARTMENT OF LABOR AND INDUSTRIES, DIVISION OF INDUSTRIAL SAFETY, DELEADING REGULATIONS (Attachment 16-K)

The tenant must also be notified with the following and encouraged to co-operate with the owner in order to assure corrective work is performed safely:

1).Sample letter, WHENEVER THE UNIT FAILS FOR DEFECTIVE PAINT (Attachment 16-L)

16.8.8.6 If a Unit Fails Inspection Due to a Substantial Amount of Defective Paint

In cases where an inspection fails due to a substantial amount of defective paint it may be necessary to require that the area be corrected by a licensed deleader. For example, if the bathroom ceiling has fallen down due to a water leak. In such a case the ceiling may have been intact at the time of the lead inspection and the lead content is unknown. The inspector may require that the owner provide documentation to confirm that either the paint is not lead or that the area has been corrected by a licensed deleader. The owner must be notified with the following attachment whenever a unit fails for a substantial amount of defective paint:

Sample letter, WHENEVER A UNIT FAILS FOR SUBSTANTIAL DEFECTIVE PAINT (16-M)

In order to pass inspection the owner must provide one of the following documents from a licensed lead inspector:

- A copy of the original Lead Inspection Report which clearly indicates that the surface(s) in question has (have) been tested with a negative result,
- A Certification of Restored Compliance, or
- A Certification of Maintained Compliance.

16.8.8.7 If A Child Has an EBL

In the state of Massachusetts, all children are required to be tested for lead poisoning on a regular basis. Public Health Inspectors of The Childhood Lead Poisoning Prevention Program are responsible for performing lead inspections and oversight of the required lead abatement in all units occupied by children under 6 with elevated lead blood levels.

If the Section 8 unit is or will be occupied by a child under 6 *who is known* to have an elevated blood lead level, the RAA must maintain all available lead related information about the unit in the tenant file. The RAA must require that the owner have the unit tested with an X-ray florescence analyzer (XRF). A Lead Inspection performed with an XRF must indicate that all applicable surfaces with lead content exceeding 1.0 mg/cm squared have been abated up to the five foot level. The CLPPP has agreed to utilize the XRF testing method whenever possible.

The RAA must ensure that there is coordination between Program Representatives and Inspectors to ensure that the number of children with an EBL is filled out on the inspection form. Frequently this information is provided to the Program Representatives by the family but is not subsequently conveyed to the inspector.

16.8.8.8 Unauthorized Deleading and Fraudulent LOCs

At times an inspector may suspect illegal deleading or unsafe work practices or a staff person may suspect a forged or altered LOC. Whenever any such activity is suspected it should be reported in writing to the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP) with a copy to DHCD's Inspection Supervisor.

16.8.9 Smoke Detectors (8.12)

HUD's Housing Quality Standard effective October 30, 1992 requires that each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit and in the basement. Smoke detectors should be located adjacent to sleeping areas whenever possible. DHCD further requires at least one battery-operated or hard-wired smoke detector be installed in common hallways. Any level is acceptable, however the top level is recommended.

If the unit is to be occupied by a hearing impaired person who requests that the owner install a smoke detector designed for the hearing impaired, it must be installed in the bedroom occupied by the hearing impaired person, adjacent to or outside the bedroom, and it must be a **permanent,** hard wire installation.

If the tenant has access to the attic for storage on a regular basis, a smoke detector is required in the attic.

16.8.10 Asbestos (8.13)

Every owner shall maintain all asbestos material which is used as insulation or covering on a pipe, boiler or furnace, in good repair, and free from defects such as holes, cracks, tears, or looseness which may allow the release of asbestos dust or which may allow the release of any powdered, crumbled or pulverized asbestos material. Whenever a unit fails for asbestos the owner must receive the Asbestos Packet (16-N). The citation on the Inspection report must read: "Asbestos material must be maintained in good condition and free from defects".

16.9 Determining the Severity of Violations

16.9.1 Sending a 24 Hour Notice for Violations When the Owner is Responsible to Correct

Violations which present an immediate threat to the health and safety of the family must be corrected within twenty-four hours. The RAA must contact the owner by phone within 24 hours of citing the violation. The phone call must be followed-up in writing. If the RAA is unable to contact the owner or agent by phone or in person, the written notice must be sent by certified mail.

The reinspection must be conducted on the following business day after the 24 hour correction period. An on-site reinspection is the only acceptable verification that the unit is in compliance.

The Inspection Form Addendum for 24 Hour Notice (Attachment 16-O) must be used to provide written notice to the owner with a copy to the tenant. See Section 17. HQS Compliance for more information regarding determining the severity of violations and the course of action when violations are discovered.

16.10 Tenant Caused Violations

Effective October, 1995 the family is responsible for a breach of HUD's HQS that is caused by any of the following:

- Failure to pay for tenant supplied utilities;
- Failure to provide and maintain a stove and/or refrigerator if required in accordance with the lease;
- Damage caused by the family or guest to unit or premises beyond ordinary wear and tear.

In instances where it is not clear or obvious that the violation is tenant caused, the burden of proof is on the owner. An owner is required by law to provide a Statement of Condition to the tenant whenever a security deposit is collected. Ask to review the Statement of Condition. If the Statement of Condition is not available, the initial inspection report may be helpful. An execution for eviction may also demonstrate that the court agrees that the tenant may be evicted and is responsible for damages to the unit. Also take into consideration whether the owner has a history or practice of violating HQS or DHCD Inspection Requirements.

The INSPECTION FORM ADDENDUM FOR TENANT CAUSED VIOLATIONS-TENANT RESPONSIBILITY (Attachment 16-P) must be used to provide written notice to the tenant. The owner must also receive a copy of the notice along with a letter of explanation (Attachment 16-Q). See Section 11.1.1.2, HQS breach caused by family for more information regarding enforcement procedures and proper course of action when tenant caused violations are discovered.

16.11 Repeated Tenant "No Shows"

A different type of accessibility issue also occurs with some frequency. In this instance, the tenant is notified of the requirement to make his/her unit available for an inspection, and the tenant repeatedly fails to have someone home to allow the inspector access to the unit. The tenant's failure to allow access to the unit after two "no-shows", where proper advance notice has been given by the RAA and the tenant has failed to contact the agency if a conflict exists with the proposed schedule for the inspection, may result in the tenant's termination from the program, in accordance with the provisions of the tenant's certificate or voucher.

16.12 Procedure to Follow for Inconclusive Inspections

At times the inspector cannot conclude whether an item passes inspection, and must classify an item as Inconclusive. **The unit does not pass inspection if any item is Inconclusive.** In certain cases a new lease may begin provided an on-site reinspection is performed once the tenant is in occupancy. In other cases, inspections are Inconclusive and subject to written approval by the appropriate, qualified professionals. THE INCONCLUSIVE CHECKLIST (Attachment 16-G) must be used for notification, tracking and follow-up.

16.12.1 Vacant

Oftentimes at initial inspection, the unit is vacant and the utilities are turned off. The owner shall be urged to have the utilities turned on for the purpose of inspection, however, in lieu of this, the owner must sign the Inconclusive Inspection Checklist attesting to the good working order of electrical and cooking facilities. Once this is signed and the unit otherwise passes inspection, the lease may begin and HAP payment can be either released or withheld until verification by an on-site reinspection to confirm the good working order. The on-site confirmation must be performed no later than 30 days after the lease start date. Failure to comply may result in HAP suspension or contract termination.

16.12.2 Tenant Supplied Appliance(s)

In the case of tenant-supplied appliances, such as a refrigerator or stove, the lease may begin the date the unit otherwise passes inspection and HAP payment can be made. Verification by an on-site reinspection to confirm the presence and good working order of the appliance, must be performed no later than 30 days after the lease start date. Failure to correct within 5 days of notification may result in rent suspension and/or tenant termination from the program.

16.12.3 Subject to Approval

An inspector may also fail or note an item Inconclusive subject to the inspection and approval by appropriate qualified professionals such as local Health, Building, Plumbing, Electrical or Fire Inspectors, licensed Heating/Plumbing Contractors, Local Utility Companies, licensed Lead Paint Inspectors, State Certified Elevator Inspectors or licensed Elevator Maintenance Companies, and licensed Extermination Companies. Any such written approval must be currently dated and specifically approve the questionable condition. If at any time the RAA disagrees with the decision rendered by the appropriate qualified professional or believes that the condition requires further evaluation, the RAA shall notify DHCD.

- **Certification Regarding the Safe Operating Condition of the Heating System and/or All Heating Appliances** - In accordance with Section 16.7.2.5 all heating systems must be certified as safe. The certificate may be posted on the heating unit.

- **Written Approval from a local official or a Posted Building Permit** may be required in situations where systemic or structural repairs or rehab are in progress. Approval may also be required when systemic or structural potential hazards or other questionable conditions may exist, such as knob and tube wiring.

- A Building Permit may also verify the date the building was built. Properties built after 1978 do not require a Letter of Compliance with the Lead Law.

- **A Letter of Compliance, A Letter of (Re) Occupancy or a Letter of Interim Control** is required in accordance with Section 16.8.8.

- An **Elevator Inspection Certificate** must be posted or on file. Oftentimes elevator inspections are not up to date. Follow up is required in accordance with Section 16.8.6.

- **Certification** from a licensed Elevator Maintenance Company may be required to confirm the safety of an elevator which fails inspection.

- A **receipt** to verify professional extermination in cases of chronic infestation.

16.13 Marginal Unit Policy

16.13.1 Responding to the Problems of Marginal Units

HUD defines marginal units to be those that are likely to fall below HQS within a year. DHCD, along with its Regional Administering Agencies, has long recognized the problem of maintaining marginal units on the Section 8 Program. Frequently, an inspector will return to a unit and note the same condition of one or more aspects of the unit that do not cause a fail condition outright, but clearly pose the likelihood of deterioration or where a fail condition could easily occur prior to the next annual inspection. Often, repairs are made, but are themselves marginal. Failure to maintain compliance may be due to inadequate attention on the part of the owner or management agent, excess or undue wear and tear on the part of the tenant, and/or the impact of neighborhood conditions.

Until recently, tackling the problem of marginal units was difficult for several reasons. A tight housing market limited the number of units available to Section 8 tenants. Imposing more stringent inspection standards would have, in many instances, resulted in tenants losing housing opportunities, thus putting them back into the homeless state they were in prior to receiving a subsidy.

The following outline will define a concrete strategy to deal with issues around marginal units and identify the specific factors that contribute to these conditions. The goal of this policy is to eliminate units which only barely meet HUD's Housing Quality Standards and DHCD Inspection Requirements yet still remain undesirable because of how quickly they fall out of compliance.

16.13.1.1 Identifying Marginal Units

The following outlines the steps to implement the Marginal Unit Policy. This procedure will be adopted by all RAAs when the unit clearly poses the likelihood of falling out of compliance in a short period of time and/or earns a poor grade.

The checklist FACTORS WHICH CONTRIBUTE TO MARGINAL UNIT CONDITIONS (Attachment 16-R) identifies a combination of conditions which shall be used to identify and designate a unit as marginal. These conditions are due to poor owner management and/or maintenance which must be improved by the owner. Each RAA has the discretion to add to the checklist whenever necessary to address specific conditions not listed. The checklist also notifies owners of the **2 additional required inspections which will be performed no more than 3 months apart.** The consequences of repeated and regular non-compliance will be contract termination.

16.13.1.2 Steps to Follow

1. Annual or Audit Inspection:

PASS - even though the unit passes inspection it may still be determined marginal. If so, complete and send to the owner and tenant "Factors Which Contribute to Marginal Unit Conditions" (Marginal Checklist). The tenant must be given a moving packet and counseled regarding relocation at this time. See Step 3 to proceed.

FAIL - owner is given the usual 30 day opportunity to correct. The quality and extent of improvement is unknown until reinspection.

2. Annual or Audit Reinspection:

The reinspection must take place no more than 30 days after the Annual or Audit Inspection. Once the unit has passed the reinspection yet is determined to be marginal, complete and send to the owner and tenant "Factors Which Contribute to Marginal Unit Condition". The tenant must be given a moving packet and counseled regarding relocation at this time.

3. 1st Marginal Unit Inspection:

This inspection must be scheduled no more than 3 months after the Annual or Audit reinspection has passed. Use the regular Inspection Checklist along with the Marginal Checklist. Indicate on the Marginal Checklist the inspection results in the space provided at the bottom. Note any improvements under comments on the Marginal Checklist. If no change - indicate no change.

4. 1st Marginal Unit Reinspection:

The reinspection must take place no more than 30 days after the first Marginal Unit inspection. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Marginal Checklist. If no change - 1st Marginal Unit Inspection. Use the regular Inspection indicate no change. The RAA has the discretion to schedule the reinspection sooner; 10 or 15 days for example.

5. 2nd Marginal Unit Inspection:

This inspection must be scheduled no more than 3 months after the first Marginal Unit Reinspection has passed. Use the regular Inspection Checklist along with the Marginal Checklist. Indicate the inspection results in the space provided at the bottom. Note any improvements under comments on the Marginal Checklist. If no change - indicate no change.

6. Termination or Additional Optional Marginal Unit Inspections:

Finally, after the two additional required Marginal Unit Inspections are complete, the RAA must assure a review by a designated staff member. Any units which have been addressed using the Marginal Unit Policy **must be reported on the DHCD Quarterly Management Report.**

If the two additional inspections have **FAILED** with no change in marginal unit conditions and the owner has failed to respond or take action to the satisfaction of the RAA, the subsidy contract must be terminated with no follow-up reinspection.

However, if an owner can show good cause for failure to correct, termination at this time may be too extreme a result. An owner should not be unfairly penalized where violations are attributable to an abusive tenant and the owner can demonstrate efforts to work with the tenant. Units which show marked improvement, evidence of a more prompt management pattern, or where the owner submits a documented long-term improvement plan, further follow-up inspections may be allowed.

16.14 Adopting a Uniform Grading System for Determining Unit Quality

Each RAA will have the discretion to develop its own grading system using the attached unit grading system as a guideline (Attachment 16-S). DHCD acknowledges that grading is a subjective task thus each RAA must stress consistent and objective standards which address the specific housing stock conditions in its region. DHCD recommends each agency incorporate a grading system into its administrative plan.

There are several reasons for grading units. The primary purpose will be in determination of rent reasonableness and annual rent increases. Grading also serves as a valuable internal tool to assess the overall quality of housing stock and to assist in identifying marginal units. DHCD recommends all new units coming on to the program receive a documented grade. New lease ups which do not meet A, B, or C are not acceptable for the program.

DHCD will have no reporting requirement concerning unit grades at this time. Once a uniform grading system has been adopted and implemented by a RAA, the current owners and tenants must be notified of the grading criteria and the unit grade upon inspection. New participants shall be informed at initial briefing session of the grading system. If a new unit is rejected on the basis of a D or E grade, the prospective owner shall be informed of the grade along with the grading criteria.

16.15 Conducting an Initial Inspection While the Unit is Still Occupied

Sometimes it is just not possible or practical to wait until a unit is vacant to perform an inspection. In these instances, which is left to the judgment of the RAAs, DHCD will permit occupied units to be inspected. The following conditions must be met:

- Since the tenant in occupancy may have no affiliation with the Section 8 program, it is imperative that the owner/management agent be present during the inspection.

- In order to begin a lease, a complete inspection must be performed. In accordance with HUD's HQS, all checklist items must be confirmed as pass. No lease can begin on a contingency basis. Under limited circumstances HUD has approved an Inconclusive rating for specific items as outlined in Section III

- If the occupants' possessions prevent a complete inspection, inaccessible areas must be rated "fail". It is the owner's responsibility to assure that all areas are accessible in order to complete the inspection.

- If necessary, a reinspection may be performed while the unit is still occupied. If the unit passes the reinspection, a lease may begin as soon as possible. Bear in mind this will depend on the tenant's ability to take occupancy.

- Once a lease has begun or the unit has become vacant a complete inspection must be performed again in no more than 30 days in order to confirm that the previous tenant left the unit without damage which would cause the unit to fail and in order to review the Apartment Condition Statement with the tenant and address any conditions the tenant may have concerns about.

16.16 Waivers

The WAIVER REQUEST FORM (Attachment 16-E) must be used to request a waiver of any HQS or DHCD Inspection Requirement.

DHCD **cannot** waive any OF HUD'S Housing Quality Standards, However, DHCD will review any request for such waiver and when appropriate, DHCD will seek HUD permission to waive certain requirements, in order to facilitate a lease-up that would in no way compromise the health or safety of the occupants. These waiver requests **must** come through DHCD.

DHCD **can** waive its own DHCD Inspection Requirements. Waiver requests should be forwarded to DHCD's Housing Inspection Supervisor. As a general rule, DHCD will not readily provide waivers to its inspection requirements, unless a compelling case can be argued in favor of granting such a waiver.

It is mandatory that both the owner and the tenant sign the Waiver Request acknowledging that approval of the waiver request does not in any way negate the owner's responsibility under the law and that in all circumstances it is the owner's responsibility to maintain the property to meet all applicable state and local Codes and not to interfere with a tenant's right to request an inspection by the local Code Enforcement Agency.

Waiver Requests must be approved and signed by the RAA Inspection Supervisor or the Program Manager prior to submission to DHCD. Although the circumstances of owners and tenants often determine approval or disapproval of a waiver request, it is not up to owners and tenants to decide when the request for a waiver from DHCD is warranted. The Inspection Supervisor or Program Manager must concur that a request for a waiver is warranted and beneficial for the family.

16.17 Audits

Both DHCD and each Regional Administering Agency are required to perform ongoing audits of a percentage of all units recently brought onto the program or recently reinspected, in each of the Section 8 program components. Along with individual unit audit inspections DHCD recommends regular "windshield tours" whereby individual unit selections can be made based on a preliminary viewing of building exterior, common areas and neighborhood conditions. DHCD fixes the number of internal unit audits which each RAA must perform on a quarterly basis, based on the previous year's performance. The standard is five percent (5%), which may be reduced or increased by DHCD's Inspection Supervisor subject to performance.

The RAA must report its results on the DHCD Quarterly Management Report. Audit results must be summarized in the same format as the DHCD Audit Summaries and Quarterly Reports. As with DHCD Inspection Audits, internal audits must be reviewed with staff inspectors and analyzed in order to determine area of weakness, need for additional training or other administrative action. The following items must be included on Quarterly Management Reports to DHCD:

- All fail items must be categorized as "Staff Oversight" or "Maintenance". (The number of fails due to staff oversight are the primary measure of an inspector's effectiveness.)
- Overall and individual "S" and "M" failure rates must be calculated.
- Unit grades must be indicated to rate the quality of housing on the Program.
- Whenever poor audit results are a trend, the number of audit inspections must be increased.

DHCD's inspection component annually audits 5% of all units under lease, that is approximately 190 units each fiscal quarter, selecting units from all agencies and from each program component. The results are used to determine which agencies need additional training, and, when necessary, which agencies must be sanctioned for failure to improve in this area of program operation.

Any comments disputing DHCD Audit determinations must be submitted in writing no later than 7 days prior to the completion of the Quarter. No comments will be accepted after the deadline.

16.18 Sanctions

HUD reserves the right to impose administrative fee sanctions on any RAA which receives greater than 20% audit failure rate on HUD audits. If any DHCD RAA is sanctioned by HUD, DHCD will withhold the designated amount of money from the RAA, and will use the money to satisfy the HUD sanction. DHCD also reserves the right to impose administrative fee sanctions on any RAA maintaining consistently poor DHCD unit audit results (that is greater than 25% unit audit failure) or consistently fails to respond to DHCD audit findings in a timely manner. DHCD will provide prior notice to any RAA being considered for DHCD-imposed sanctions, and will provide a prescribed period of time in which the RAA can demonstrate improved performance.

16.19 Training

The DHCD Inspection Supervisor is required to perform at least three training programs for all RAA inspectors on an annual basis. These sessions will focus on those areas which the DHCD inspection audit results indicate additional follow-up is required as well as provide more advanced inspection training in significant areas of housing quality standards. Additionally, DHCD may request that the RAA inspector who performed the original (re)inspection of an audited unit, accompany DHCD during the audit This time may be used to do one-on-one training, answer questions, and discuss issues. Periodically, DHCD invites HUD staff to participate in training sessions, in order to provide a HUD perspective and methodology.

DHCD will make an effort to be available upon request, to train new RAA inspectors as they come on board. However, if the DHCD Inspection Supervisor is unavailable, it is the RAA's responsibility to train new inspection staff before they may do inspections on their own.

16.19.1 DHCD Mentor Program

The program is designed to enable all RAAs, large or small, to have access to adequate inspection training in the field with one or more experienced RAA inspectors. Anytime a new inspector is hired, or whenever it is determined that an inspector needs additional training, the RAA may report this to DHCD and request arrangements to participate in the Mentor Program.

Once a request has been made, in order to make a referral, DHCD will inquire at RAAs regarding the availability of qualified Mentors. In order to assure that Mentoring does not require any additional time commitment for the Mentoring agency, it is recommended that Mentor Training take place in the Mentor's region during regularly scheduled internal audit inspections. Once the referral is made, the RAAs are responsible to make specific arrangements concerning the time, place and the number of inspections.

Participation and Incentives

Mentoring is voluntary, however each RAA is encouraged to participate in the Mentor Program. In order to participate as a Mentor, the RAA must demonstrate a DHCD inspection audit fail rate of no more than 25% for at least two consecutive quarters. For each 10 Mentoring inspections, DHCD will temporarily reduce the required number of internal audits for the RAA. The actual number will vary according to the total usually required, the size of the RAA program, recent DHCD audit inspection results, etc.

Although DHCD recommends that a new inspector complete a minimum of 35 inspections with a Mentor, this is not required. However, whenever an RAA completes 35 inspections with a Mentor, DHCD will temporarily reduce the required number of internal audits for the RAA. The actual number will vary according to the total usually required, the size of the RAA program, recent DHCD audit inspection results, etc.

Eligible Mentors

The Mentor Inspector shall be either an RAA Inspection Supervisor or other RAA inspector who usually performs internal audit inspections and/or inspection field training for new inspectors.

Mentor Training during regularly scheduled internal audit inspections will assure that each training inspection will be a complete inspection of the entire premises, not a reinspection. DHCD recommends that the trainee fill out an Inspection Checklist independent from the Mentor inspector. This will enable the new inspector to become familiar with the inspection procedure and format. The copies of this inspection may be signed by the Mentor and may serve as verification that the training inspections have been completed.

16.20 Additions and Amendments

Additional DHCD Inspection Requirements, HUD's Housing Quality Standards, and amendments to this plan may be added from time to time. Further, modifications to existing DHCD Housing Quality Requirements may be made from time to time. Any additional unusual circumstances should be referred to DHCD in order that DHCD and the administering agency can together make the most reasonable determination on how to resolve such matters.

16.21 List of Attachments

16-A	Inspection Checklist (2 pages)
16-B	Inspection Form Addendum for a Microwave Oven
16-C	Handrails
16-D	Proper Porch Foundations and Footings
16-E	Waiver Request Form
16-F	Floor Furnace Caution Notice
16-G	Inconclusive Checklist
16-H	Sample Copy LOC
16-I	Minimal Defective Paint May Pass Per HQS (Chart)

16-J	Homeowner Safety Precautions When Maintaining Compliance
16-K	MA Dept. of Labor and Industries, Deleading Regulations (2 pages)
16-L	Sample Letter to Tenant Whenever Unit Fails for Defective Paint
16-M	Sample Letter to Owner Whenever Unit Fails for Substantial Defective Paint
16-N	Asbestos Packet (11 pages)
16-O	24 Hour Notice to Correct - Owner Notification
16-P	Notice of Tenant-Caused Violations to Tenant
16-Q	Letter to Owner With Notice of Tenant-Caused Violations
16-R	Marginal Unit Checklist (2 pages)
16-S	Unit Grading Criteria (3 pages)

17. HQS Compliance

17.1 Determining the Severity of the Violation(s)

Each unit must pass inspection once a year, at least 30 days before the anniversary date of the lease. At any other time, inspections can occur at the request of the tenant or owner, or as a result of unit audit inspections performed by the RAA, DHCD or HUD. There are FOUR types of violations that could be discovered during a unit inspection.

17.1.1 Serious HQS Violations

Violations that present an immediate threat to the family's health or safety and must be corrected within twenty-four hours. The unit is uninhabitable until the repairs are completed.

17.1.2 Other HQS Violations

Violations that could affect the family's health or safety if not corrected within a reasonable amount of time, or other violations that do not affect health or safety.

17.1.3 New HQS Violations

Violations cited subsequent to the initial, failed annual, or other inspection. The new fail item(s) must be treated as a separate failed inspection, with all the ensuing remedies or sanctions, without impacting the prescribed course of action in progress.

It is extremely important that the RAA communicate to the owner that any new violations noted at each re-inspection must be cited. The RAA must make every effort to ensure that initial inspections are thorough, to minimize the possibility of finding new HQS violations upon re-inspection.

17.1.4 Other Deficiencies

Other deficiencies that those that are not HQS violations; are not life threatening; and, do not affect the family's health & safety. These deficiencies should be corrected at some reasonable future date or they could easily deteriorate into more serious violations. Other deficiencies should always be noted to help avoid security deposit claim issues that may arise when the family vacates.

17.2 Course of Action When Violations are Discovered

This section addresses violations the owner is responsible for correcting. Treatment of tenant caused HQS violations is addressed in section 11.1.1.2. An owner is not required to correct tenant caused HQS violations caused by any of the following:

- failure to pay for tenant-supplied utilities
- failure to provide and maintain tenant-supplied appliances
- damage caused by family or guest to unit or premises (beyond ordinary wear & tear).

These procedures must be followed by the RAA at any time staff discovers that one or more HQS are not being met. When a unit is out of compliance several key factors should be collectively considered to determine an appropriate course of action:

- severity of the violations;
- number of violations;
- length of time violations remain outstanding;
- owner's or tenant's good faith effort to make repairs;
- past repair history of owner; and,
- whether the non-compliance is tenant-caused.

17.2.1 Serious Violations

The RAA must contact owner or agent by phone and inform them of need to make the repairs within 24 hours. The phone call must be followed-up in writing. If the RAA is unable to contact the owner or agent by phone or in person, written notice must be sent by certified mail.

Re-inspect unit on the day following the 24 hour correction period. On-site re-inspection is the only acceptable verification that the unit is in compliance with HQS.

If the violations have not been corrected satisfactorily, the owner and family should be notified that the HAP payment will terminate immediately, i.e., as of the date of the re-inspection. The notice will state that the HAP payment will resume only after repairs have been satisfactorily corrected; and, that the HAP payment will be pro-rated on the number of days the unit is in compliance beginning with the date of a subsequent satisfactory re-inspection. If the unit is in compliance upon re-inspection and the owner can document an earlier repair completion date, the HAP payment may resume as of that actual compliance date.

When termination of HAP payment occurs, the family should be immediately advised:

- To seek competent legal counsel relative to continued payment of their rent share. RAA's must not attempt to provide legal advice to tenants.
- That the RAA may have to terminate the HAP contract and that if the HAP Contract is terminated, the RAA will issue the family a new subsidy and provide the family with a list of available units on file at the RAA.
- That the family may assume responsibility for the full rent amount and lease the unit in question without further assistance by the RAA.

If the repairs are completed on or before the next HAP payment date, the payment should be reduced by the per diem amount of the rent that reflects that period of time in which the unit was not in compliance. For example:

- April HAP payment of $300 has been paid.
- April 4, inspector verifies serious leak in ceiling from an upstairs apartment where pipe had burst.
- Owner notified, in person and in writing, to correct within 24 hours.
- On April 6, inspector returns and notes that only minimal work has been done to repair damage to family's unit, and leak still continues.
- Owner is sent a notice that the HAP payment will be terminated, effective immediately, and continuing until the repairs are completed.
- Family is advised to seek legal counsel relative to their rent share.
- On April 15, unit is re-inspected and all work is completed.
- Owner is notified that the HAP payment for May will be reduced by $100.00, that is $10 per day ($300/30 =$10) for the 10 days the unit was in non-compliance (from April 6-15).
- Family's legal counsel should advise family of any further action on tenant's share.

If repairs are not completed before the next HAP payment check is to be mailed, no payment may be sent to the owner. When the owner indicates that repairs have been completed and the inspector can verify this, a pro-rated share of the subsidy may be paid from the date the inspector approved the unit.

Depending upon the nature of the serious violation, if repair(s) are not completed promptly, the RAA should terminate the HAP contract when it becomes apparent that the owner will not cooperate in making the necessary unit corrections. The RAA should not allow more than 10 days for serious HQS violations.

17.2.2 All Other HQS Violations

Immediately upon completion of the inspection, the owner must be provided with written notice outlining the corrective action to be taken and possible penalties for failure to comply. If the owner is present at the inspection any fail items and the necessary corrective action should be discussed at that time.

The owner should be given a reasonable amount of time to make the necessary repairs, usually 30 days. During this time, the HAP payment continues without penalty.

Re-inspect the unit on, or immediately after, the required completion date. An on-site re-inspection is the only acceptable verification of HQS compliance.

If work has been completed no further action is necessary and the HAP payment will continue uninterrupted.

If work has not been completed, the inspector should attempt to determine why. Does the owner have a legitimate need for more time? Is the owner making a good faith effort to meet his obligations, but having difficulty meeting the RAA schedule? Are there seasonal considerations? Is the family cooperating? Depending upon the inspector's assessment of the situation relative to the RAA's written policy and required criteria four options are available:

17.2.2.1 Options when work is not completed satisfactorily

17.2.2.1.1 Terminate HAP payment

The RAA will notify the owner, in writing, that:

a) the HAP payment will stop effective immediately;
b) payments will not resume until the repairs are completed; and,
c) no retroactive payment will be made for the period of time the HAP payment is terminated.

(See discussion of HAP payment termination in part 17.2.1, Serious Violations.)

17.2.2.1.2 Grant a "no-penalty" extension of time to complete repairs

During the extension period, the HAP payment may either continue uninterrupted OR be withheld until completion of repairs and paid in full retroactively.

Pay Full HAP payment

In very limited (RAA-predetermined) circumstances, an owner may continue to receive the full subsidy during the course of an approved "No Penalty" extension. At the end of the extension period, if work is not completed, the RAA has the following options:

- terminate the HAP payment; or
- grant an additional "with penalty" extension; or
- grant an additional "no penalty" extension; or
- terminate the HAP contract.

Generally, mitigating circumstances are the only reason for granting an additional "no-penalty" extension. The Owner must be able to document the mitigating circumstances. The documentation must be attached to the inspection supervisor's approval, and maintained in the family's file.

Withhold HAP payment and reimburse in full when all work is completed

In limited (RAA-predetermined) circumstances, the HAP payment may be withheld and paid in full retroactively if the unit is brought into compliance by the repair deadline. At the end of the extension period, if work is not completed, the inspection supervisor must decide whether to:

- grant an additional "no penalty" extension; or
- terminate the HAP contract; or,
- grant an additional "with penalty" extension and withhold and reduce the HAP payment in accordance with section 17.2.2.1.3.

17.2.2.1.3 Grant a "with penalty" extension of time to complete repairs

During a "with penalty" extension period, the HAP payment **must** be withheld. Upon completion of repairs a partial, retroactive HAP payment will be made to the owner. If the owner does not complete the repairs, the HAP payment will be terminated as described in 17.2.2.1.1 above.

Generally, the appropriate response to a failed re-inspection is to withhold and reduce the HAP payment during the extension period. The HAP payment reduction may range from 2% to 100%. When the repairs are complete, the RAA may make a partial retroactive payment. If the repairs are not completed by the end of the extension period, either the HAP contract will terminate **or**, if the owner can show cause why additional time is needed, the subsidy will continue to be withheld until the repairs are made.

Withholding HAP payment during an extension period is a good inducement for an owner to complete the repairs. It demonstrates that the RAA is serious about seeing the repairs are completed. Instead of rewarding the owner with the full HAP payment during an extension, the HAP payment is withheld and the owner is able to receive a reduced portion only when the repairs are made. This mechanism recognizes a "diminished value" of the rental property while the repairs are outstanding, consistent with Massachusetts state law.

If the subsidy is withheld, the family should be advised to seek legal counsel with respect to appropriate rent withholding procedures under Massachusetts state law.

Sixty days from the date of the initial fail, or approved extension, if the unit remains in non-compliance, steps should be taken to terminate the HAP contract. The RAA must send written notice to both the family and the owner advising them of the date of the contract termination (give an effective date of not more than 30 days from the date of the notice), at which point the family will become a tenant-at-sufferance and the RAA will no longer be responsible for the rent. Again, the family needs to be made aware that once the contract is terminated, if they wish to retain their assistance, they must locate a Section 8 approvable unit within 120 days of the termination effective date. They should also be again urged to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit.

When considering whether to withhold the HAP payment, the RAA must make the following decisions:

How much to withhold?
There is no one formula to follow when making this determination. It is a good idea to check with the closest regional Housing Court to determine how judges make these same determinations. Or, an RAA may establish a schedule of percentages that reflect the approximate worth of individual features in an apartment, and use these percentages when calculating a reduced subsidy payment. Each RAA must ensure that any schedule it develops is fair and that a consistent procedure is followed. Each RAA must develop a written policy that defines its method of making these determinations. This policy must be approved by DHCD and incorporated into the RAA's administrative plan.

During an extension how does an RAA decide whether to keep making the full HAP payment or to withhold the HAP payment?

Each DHCD Section 8 Program Director must ensure that these decisions are being thoughtfully, reasonably, and consistently implemented. Having more than one option to rely upon if required work is not completed in a timely manner is one of the key features of DHCD's Section 8 program. This option allows each RAA to comply with HUD and DHCD requirements without having to take a rigid, bureaucratic position each time repairs are not made as required. It allows RAAs to encourage owners to get their work done, without having to cut off their HAP payment entirely. This is consistent with the rental owner's expectations under Massachusetts law.

17.2.2.1.4 Terminate the HAP contract

Although the HAP payment is suspended immediately, a 30-day notice of intent to terminate the HAP contract for non-compliance is recommended to alert the family to the impending condition of being "on the clock". The family must be issued a new subsidy and informed that in order to retain their rental assistance they must locate a new, approvable unit within 120 days of the contract termination date. The notice must also advise the family to seek legal counsel regarding their rights and responsibilities as a tenant-at-sufferance in a non-compliant unit. Provided that the HAP payment had not been terminated, the owner may receive a partial payment of the withheld subsidy pro-rated from the date of suspension to the effective date of the contract termination: this is consistent with our recognition of the "diminished value" of the property.

The owner and family must be notified, in writing, of the selected course of action and the new repair deadline and re-inspection date, or contract termination date included therein.

17.2.3 New Violations

A violation that is cited for the first time at a re-inspection (regardless of whether it had previously been overlooked by an inspector **or** had occurred subsequent to the initial failed inspection) does not automatically trigger an extension. The owner and tenant must be notified, in writing, of the new fail item(s), the new fail repair deadline, and the new fail re-inspection date **without** impacting the progress of the initial fail.

17.2.4 Other Unit Defects that are not HQS Violations

There are no sanctions or penalties for these unit defects. These defects should be noted on the inspection form, and a copy given to both the family and owner for their records. Owners should be encouraged to make the repairs so that they will not turn into violations at a later date. Failure to make these repairs could cause the annual adjustment factor (AAF) to be reduced or not paid at all.

17.3 HQS - Unit Remains in Extended Non-compliance

1. When a unit fails inspection, the RAA must notify the owner immediately of the time allotted to perform the repairs.

2. The unit must be re-inspected to determine if the repairs have been done. On-site re-inspection is the only acceptable means of verification.

3. If repairs have not been completed, the procedures outlined in section 17.2 should be followed. The owner must be notified in writing of any action being taken.

4. The RAA must have an internal review system for cases where the unit has been in extended non-compliance (even if a no-penalty extension has been granted). The internal review system should allow certain decisions to be examined by someone in the RAA not previously involved in the case when non-compliance exceeds three months.

5. All HAP suspensions of over three months must be listed on the quarterly report to DHCD.

6. When a decision is made to suspend HAP payments, the case must be reviewed on a monthly basis. The monthly review may be done by the person who originally made the decision to suspend the subsidy.

7. After three months of suspended HAP payment, if the repairs have not been completed, the HAP Contract should be terminated. If there are mitigating circumstances, a decision may be made not to terminate the HAP Contract. The decision should be discussed with a staff person not previously involved in the case, to strategize over future action if the suspension will be continued for longer than three months.

8. After six months of suspended HAP payments, the case must be submitted to DHCD for review. A history of the case should be submitted, including what steps have been taken to review the case internally, and an explanation of why the HAP Contract has not been terminated.

9. Whenever the HAP payment is suspended the family must be notified in writing. The notice to the family must state that:

   a) The HAP payment has been suspended.

   b) If the owner continues to neglect the repairs, the RAA may terminate the HAP Contract.

   c) If the HAP contract is terminated the RAA will cease to be responsible for the contract rent. If the family remains in place after the effective date of the HAP contract termination, it will be as a tenant-at-sufferance. The family will be issued a subsidy and given the maximum amount of time (120 days) to find a new unit. If the family remains in place and the subsidy expires they will lose all rental assistance

benefits. The family must move in order to retain its assistance. The family may move prior to the effective date of the contract termination, provided proper notice is given to the owner and the RAA.

d) The family is advised to seek legal counsel on paying its rent share during the period of suspension. It is advisable that the family continue to pay rent if it chooses not to consult an attorney.

e) If the family pursues a court action against the owner instead of moving, it must notify the RAA. If the family chooses not to move because of a pending court action, and subsequently loses in court, the RAA should seek DHCD guidance on how to handle the case.. If the family prevails in court, DHCD will reinstate the family in the unit in question, not in another unit (provided the unit passes inspection).

f) The family remains obligated to give proper notice to both the owner and the RAA before moving.

10. When a decision is made to terminate a HAP Contract, the family should be issued a subsidy. The effective date of the subsidy should coincide with the effective date of the HAP Contract termination, although the subsidy may be issued prior to the termination date. The family should again be advised to seek legal counsel regarding payment of rent.

If a case is in litigation, or if the Board of Health is taking action against the owner, but the HAP Contract would otherwise be terminated, DHCD will refer the case to its Counsel for a decision on whether to terminate the HAP Contract. The RAA should send written request for such referral to DHCD's Bureau of Federal Rental Assistance. The referral should include a brief summary of the case.

An RAA may be reluctant to terminate a HAP Contract because of the consequences for the family. While DHCD realizes that termination of the HAP Contract will probably force the family to move, we should not allow assisted tenants to live in substandard housing indefinitely. If a vacant unit fails inspection, we do not allow a family to live there: our standards for in-place tenants should not be significantly different. Furthermore, it is unfair to tie up a subsidy beyond 120 days if it cannot be utilized according to program requirements.

18. Special Programs

DHCD administers a variety of special programs. Applicants for these programs must meet additional, specific, eligibility requirements. The majority of Section 8 related-activities for these programs are carried out in accordance with this Administrative Plan and all applicable HUD requirements. The primary modification made for these initiatives occurs in tenant-selection related areas, as each program is designed to serve a particular target population. The administrative plans for these programs are on file at HUD and are incorporated by reference into this Section 8 Administrative Plan. For more information about these programs contact DHCD's Bureau of Federal Rental Assistance at (617) 727-7130 ext. 655.

See Section 3.3.7 for more information about special program waiting lists.

See Section 10.4 for DHCD's policy for determining the eligibility of remaining family members in special programs.

18.1 Special program transfers

As a result of special program transfers being absorbed by the receiving RAA, DHCD has issued more subsidies under these programs than was originally required. Special program transfers must be absorbed by the receiving agency with a subsidy specific to that program , if one is available. If not, and the transfer is absorbed with a standard subsidy that family should be tracked since it counts toward the required number of slots for that program. The subsidy should then be switched when a special program subsidy becomes available.

18.2 Family Unification Program (FUP)

DHCD, in concert with the Massachusetts Department of Social Services (DSS), has agreed to target the following two populations for FUP consideration:

- battered women and their children who have been displaced because of the battering situation and have not secured permanent, standard, replacement housing; and

- families with children in placement who have substantially complied with all DSS service plan tasks but do not have permanent or adequate housing to which their children can be returned.

The family must demonstrate that they meet at least one of HUD's federal preferences as defined at 24 CFR 5.420(b)(4) or 5.425, as amended. Both of these federal preferences are targeted towards households who lack adequate housing.

Applicants must have an open DSS case at the time of referral/application, at the time of selection, and at the time a subsidy is issued. The family must be otherwise Section 8 eligible.

All FUP subsidies will be issued to other FUP eligible applicants upon turnover.

18.3 Veterans Affairs Supported Housing (VASH)

DHCD administers a pilot program established by HUD and the Department of Veterans Affairs (VA) that serves homeless veterans with severe psychiatric and/or substance abuse disorders. The program combines a set-aside allocation of Section 8 Rental Vouchers provided by HUD, and ongoing case management and clinical services provided by a component of the VA: Veterans Affairs Supportive Housing (VASH).

This is a set-aside program, and the rental vouchers allocated to DHCD in connection with this program will only be issued to eligible applicants referred to DHCD by the VASH staff. The VASH staff will identify homeless veterans through outreach efforts. The person(s) identified by VASH staff will receive treatment and be stabilized medically prior to issuance of the rental voucher. VASH staff will aid in housing search, and will continue to provide community-based case management services, outpatient health services, hospitalization, and other assistance on a regular basis, as needed.

The VASH program is located in Bedford, MA. DHCD and VASH staff determined that the optimal intake sites would be Boston and Lowell. DHCD has therefore designated its regional administering agencies in these two areas to receive allocations of rental vouchers under the HUD-VASH initiative.

These vouchers will remain a set-aside allocation, and will be reissued at turnover to eligible veterans referred by VASH staff.

A full description of the administrative details for the VASH was submitted to HUD in June 1992 and is incorporated by reference into this Section 8 Administrative Plan.

18.4 The Housing Options Program (HOP)

In 1994, HUD awarded DHCD 175 Section 8 Vouchers for homeless disabled households residing in the greater Boston area.[2] DHCD developed its response to the HUD Notice of Funding Availability (NOFA) in collaboration with a number of state human service agencies and several nonprofit housing and supportive service agencies. The program proposed by DHCD and its partners is known as the Housing Options Program (HOP). The purpose of the HOP is to supplement rental assistance funds with an ongoing array of appropriate supportive services in order to facilitate successful tenancies for the homeless disabled households selected to participate in the program.

[2] HUD's Notice of Funding Availability (NOFA) for this initiative was modeled closely after the tenant-based rental assistance component (TRA) of the McKinney Shelter Plus Care Program.

A key requirement of this initiative mandates a dollar for dollar match of housing subsidy and services for the targeted population for the full five year period of the Annual Contributions Contract (ACC). In response, the participating state human service commissions agreed upon a formula to divide the subsidies among their respective populations and commit equivalent service dollars for their clients over the course of the program. Additionally, each of the participating state agencies agreed to contribute five years of funding to underwrite the costs of a "lead service agency" (LSA) which would be hired to coordinate and manage the daily operations of the program. The LSA's functions would include ♠outreach, intake and assessment of eligibility for the program; ♠establishing specific waiting lists for each of the disabled populations and conducting many (but not all) tenant selection-related activities; ♠housing search and counseling; ♠on-going case coordination; and ♠evaluation and reporting.

The Commonwealth's Department of Mental Health (DMH), the agency receiving the largest share of the set-aside vouchers, agreed to serve as the primary state human service agency for the purpose of issuing a Request for Proposal (RFP) to secure the services of an LSA and to provide staff support for the initiative. However, because of the collaborative nature of this initiative, the program design and on-going implementation of the program is overseen by an Interagency Advisory Team (IAT), which meets regularly with the LSA and all other participants to assure that the mandates of the program are being achieved and to provide continued direction and problem-solving. The IAT is made up of each of the participating human service agencies: DMH; the Department of Mental Retardation (DMR); both the Substance Abuse and AIDS Bureaus of the Department of Public Health (DPH); the Massachusetts Rehabilitation Commission (MRC); the Massachusetts Executive Office of Health and Human Services (EOHHS); DHCD; MBHP [DHCD's regional administering agency in the greater Boston area]; and several nonprofit service providers.

The majority of Section 8 related-activities for the HOP are carried out in accordance with this Administrative Plan and all applicable HUD requirements. The primary modification made for this initiative occurs in tenant-selection related areas, as this is a Congressionally-mandated set-aside program for a targeted population. A full description of the administrative details for the HOP was submitted to HUD in May 1994 and is incorporated by reference into this Section 8 Administrative Plan. Additional details about the administration of this program are also included in the RFP issued by DMH, which is available upon request to DMH's MetroBoston Housing Office at (617) 727-4923 ext. 358. Documents prepared by JRI Health, the LSA for this initiative, and IAT meeting notes, prepared by DMH staff, also serve to provide on-going and up-to-date guidance on how this initiative is operating, and are available upon request to DHCD's Bureau of Federal Rental Assistance at (617) 727-7130 ext. 655.

18.5 TBRA for persons with AIDS and HIV infection

This DHCD initiative provides 100 Section 8 vouchers (and 100 HOME TBRA certificates) for persons living with HIV/AIDS. This program links rental assistance to appropriate supportive services in order to facilitate successful tenancies for persons living with HIV/AIDS. The goal of this supported housing program is to assist individuals and families with AIDS by helping them to stabilize their lives, enhance their ability to cope with their illness, and promote living with dignity.

A lead service agency, JRI Health, provides intake, assessment, housing search and provides the critical linkages to other service providing agencies throughout the Commonwealth. JRI was the successful respondent to an RFP that DHCD issued in October 1994. The Department of Public Health provides DHCD with HOPWA funds to support JRI's activities for this initiative.

Persons accepted into the program will receive a federal rental subsidy and supportive services. Supportive services may include assistance finding a suitable apartment; case management; substance abuse/relapse prevention support; assistance in arranging and coordinating home health services; home-based mental health support; housekeeping assistance; and help arranging respite care, day care and transportation.

Eligibility requires that:

- at least one person in the household has an AIDS diagnosis or be disabled due to HIV
- head of household is at lease 18 years of age
- household meets HUD very-low income guidelines
- household meets DHCD preference criteria
- eligible household member is physically and behaviorally stable enough to live independently in the community, based upon intake interview and reference screening
- applicants must be willing and able to comply with program guidelines
- all other Section 8 eligibility requirements such as income, CORI, and immigration status apply.

This scattered site assisted living model provides an opportunity to integrate appropriate support services within an independent, non-stigmatizing living environment that provides assistance in obtaining and coordinating medical and home care, counseling services, and help with the myriad tasks of daily living.